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GENERAL HEADINGS.

Cases Reported this Week.

Current Topics.

The Liverpool Law Society.

WE HAVE pleasure in calling attention to the Presidential Address, which we print elsewhere, of Mr. F. H. EDWARDS, at the annual meeting of the Liverpool Law Society, and to the report of the Committee. The leading feature of the address is its criticism of Crown procedure and of the manner in which Government Departments enter into commercial transactions, and then set up their special privileges as representatives of the Crown. The question of the Crown as litigant was ably dealt with by Mr. PAXTON in his paper at the Liverpool meeting in 1920 (65 SOL. J. 62), as well as by Sir CHARLES MORTON, in his Presidential Address at that meeting (*ibid.*, p. 11), and both these gentlemen gave evidence before the Crown Procedure Committee. We have been wondering when that Committee was going to produce its report, and now we gather that it has in fact reported, but Mr. EDWARDS says the report was never publicly issued. Who was responsible for this secrecy—whether Lord BIRKENHEAD or Lord CAVE—we are not informed, but clearly one of them is at fault. It may be that the report of a Departmental Committee is sometimes withheld from publication, but this, if ever justifiable, should be exceptional. Both the Crown Procedure Report and the recent report of Mr. Justice RUSSELL'S Committee on Solicitors' Remuneration, which also has been withheld, should have been published. Secrecy is not a suitable incident for a Minister of Justice such as the Lord Chancellor professes to be. Information as to proposed alterations in the Scale Fees will be found in the report of the Liverpool Law Society's Committee, which is not secret.

The New Divorce Rules.

WE PRINT elsewhere the new Divorce Rules which have been made by the President. They are marked as Provisional, but since they are not made by the ordinary rule-making authority,

s. 2 of the Rules Publication Act, 1893, regulating the issue of provisional rules, does not seem to apply. Presumably the term "provisional" is used on the analogy of that section, and in due course the Rules will be issued in final form with such amendments as Sir HENRY DUKE considers necessary. It is with no disrespect to him that we repeat our former observation that these are rules affecting the practice of the High Court, and that the anomaly of the Judicature Act, 1875, by which they are withdrawn from the Rule Committee and left to the head of one division of the High Court, ought to be removed.

The Insularity of the P. D. & A. Division.

WE CALLED attention recently, *ante*, p. 132, to the Report of the Legal Procedure Committee of the Council of The Law Society on Probate and Divorce Practice, and to the suggestions made by it for the simplification of the Rules. The Rules which have been issued appear to effect a considerable improvement in the procedure in matrimonial causes, but the mode of their production is shewn by the continued policy of insularity, and the recommendation that the practice in Divorce should be assimilated to the practice in the King's Bench Division has not been adopted. It is forgotten that Divorce jurisdiction is not now confined to one Division of the High Court, carrying on its work on its own lines, and in an atmosphere of mystery, but is exercised also by judges of the King's Bench Division. Hence the familiar process of a writ, which is sufficient in general to initiate other litigation, is not adopted, and proceedings in a matrimonial cause must still be commenced by a petition. This, in itself, may not be a matter of great importance, but it carries the consequence that the ordinary rules as to service, pleadings, trial, and other matters, do not apply, and that special provision has to be made by the Divorce Rules. Practically the new Rules give a self-contained procedure for matrimonial causes, instead of adopting the general rules of practice and making only such variation as the nature of the questions to be tried requires.

Co-Respondents and Interveners.

THE NEW RULES preserve the distinction between co-respondents to a husband's suit, and interveners in a wife's suit, though the reason for it is not clear. The equality between the sexes, which now exists in divorce and generally, suggests that the same procedure should apply to alleged paramours of either sex. The Rules, however, adopt the suggestion made by the Legal Procedure Committee which pointed out that a wife's petition might go to trial, and result in the finding of adultery by the husband with some woman, without that woman even having heard of the proceedings. She might apply to intervene, but there was no provision that she should have notice of the proceedings. Rule 17 now provides for service in such a case of a copy of the petition, with notice that the person served is entitled to intervene. Under r. 41 all applications not directed to be made to a judge will be made upon summons to a registrar. Under the unification of the Rules of the Supreme Court and of the practice which should be effected, the registrars would become masters, possibly only a change of name, but it would bring the Probate, Divorce and Admiralty Division into line with the other divisions. It would be one of the advantages of a Ministry of Justice that such anomalies as the present isolated position of this Division would hardly be allowed to continue.

The Prison Commissioners' Report.

THE REPORT of the Commissioners of Prisons is one of the most interesting documents of the year, and the one just issued, for the year ended 31st March last, expresses very clearly the endeavour of the Commissioners to lessen imprisonment and to ameliorate its effects. Actually, of course, they have no control over the number of prisoners. Their function is to receive and deal with the persons on whom sentence has been passed elsewhere. They occupy, indeed, a position analogous to the lunacy authorities and act upon "reception orders" and it is very much a question of the day whether the similarity should not be further extended. Under the Reports from local prisons which are appended, we find the Medical Officer at Birmingham Prison calling for fuller use of the system of examination into the mental state of prisoners, and we believe this view of crime has been carried further at Birmingham than elsewhere. But the Prison Commissioners have the opportunity of diminishing imprisonment indirectly by urging the fuller use of probation and of allowing time for payment of fines. Some courts, they say, make a full and bold use of probation, and have efficient officers, while in others a probation order is of rare occurrence. The indications are that a courageous use of probation, under efficient probation officers, is generally successful, and that the attitude of the committing courts in each area towards the probation system, and the quality of their probation officers, is quickly reflected and easily traced in the population of the local prisons.

Imprisonment for Debt.

ONE OF THE most striking facts in the Report is the increase in the number of persons imprisoned as debtors or on civil process. Imprisonment for debt is supposed to have been ended by DICKENS, but since then it was for many years a leading feature of county court process. In this respect county courts have undergone a very marked improvement, and short of being abolished altogether, imprisonment of this kind has reached, perhaps, the lowest possible figure. The increase in the last few years—from 1,830 in 1918-19, to 9,267 in 1921-22, and now to 12,995 in 1922-23—is due to non-payment of wife maintenance, bastardy arrears, or arrears of income tax. The Commissioners, while considering that in many cases committal is unavoidable and right, nevertheless appear to regard the process with doubt. A good many, it seems, pay as soon as they find themselves in prison; rather, we imagine, their friends have to find the money for them. But otherwise there is only expense to the taxpayer, with no resulting good to anyone. "The taxpayer maintains them, and the creditor, or the woman who is in need of support, usually gets nothing." The greatest absurdity is in imprisonment for non-payment of income tax. The gain to the State must be negligible. Then, again, there is the failure of justices to allow time for payment of fines. Out of 15,861 persons who were committed in default of paying fines, 12,233 are recorded as not having been allowed time to pay. As we have said, the Prison Commissioners by calling attention to these facts can exercise a salutary, though indirect, control over the volume of imprisonment.

The Education of Prisoners.

WITH REGARD to crime, while the Report says that serious crime does not seem to be increasing, it regards unemployment, and also the laxity of conduct which had its origin in war conditions, as the chief contributory factors to the prison population of to-day, and the statistics show how greatly recidivism tends to keep the prisons full. Of 37,336 receptions of men and 10,035 of women during the year, 22,108 men and 8,437 women had been previously convicted—percentages of 59 and 84. Of these 2,082 men and 3,127 women had been previously convicted over twenty times. "The fact that nearly one-third of the total receptions of women were people who had had over twenty previous convictions shows again the peculiar difficulty of restoring women to ordinary standards of life and conduct once they have become accustomed to prison surroundings, and the need for trying every possible alternative." But we can only touch on a few of the leading features in this valuable Report. Education is one of the agencies on which the Commissioners rely for improving prison life and the future of the inmates; and, in the scarcity of funds, they asked for voluntary help as Educational Advisers to the Governors of Prisons from persons interested in education. The result was gratifying, and in Appendix No. 3 there is a list of twenty-three well-known persons who responded to the call. It includes Professor E. DE SELINCOURT, of Birmingham University, Professor G. H. LEONARD, of Bristol, Mr. NOWELL SMITH, of Sherborne School, and Principal HETHERINGTON, of Exeter.

Obstruction of the Exercise of the Franchise.

AN INGENIOUS attempt to extend in a novel direction the exercise of the jurisdiction to issue an injunction failed in the case of *Smith* v. *Fitzroy, Times*, 6th inst. A parliamentary candidate, it was alleged, had issued along with his election address a card instructing voters that in order to make certain that their vote would not be wasted, it was necessary to put a X against his name. The suggestion made by his opponents, in applying to Mr. Justice ASTBURY for an injunction, was that this notice was calculated to mislead ignorant electors by making them suppose that the putting of a X against that particular candidate's name was an essential formality of the ballot; consequently they would put crosses against his name as well as that of the other candidate, if they were supporters of the latter, and thus spoil their papers. The suggestion seemed far-fetched, but the learned judge considered that the notice in question was misleading, and therefore an improper act, which might be the subject of election petition proceedings at a subsequent date. But even if the notice amounted to an irregularity, it could not be said, in the learned judge's opinion, to be one of those illegal and corrupt acts for which a penalty is prescribed by the Elections (Illegal Practices) Acts. Such a corrupt practice would be a crime, and therefore in a proper case restrainable by *quia timet* injunction. So would a circular containing defamatory allegations, for slander and libel are torts, and torts are an appropriate subject for the remedy by injunction. But an irregularity which is neither a crime nor a tort (of course, it is neither a breach of contract nor a breach of trust), even if proved as alleged, is not enjoinable. Faced with this difficulty, counsel for the applicant ingeniously suggested that the franchise is a legal right in the nature of a right of property, and that therefore any unjustified interference with that right is actionable as a tort: *Ashby* v. *White*, 2 Ld. Raym, 938; 1 Smith's L.C., 11th ed., 240. The physical obstruction of a voter attempting to vote would be an act "impeding him in the exercise of his franchise," and therefore enjoinable. If a physical obstruction is thus actionable, would not a moral attempt to prevent him exercising his legal right, by giving him directions which would induce him unintentionally to create a spoiled paper, and therefore render his vote nugatory, amount likewise to an actionable interference restrainable by the Court by injunction? Although somewhat impressed by the principle thus relied on, the learned judge considered that in all the circumstances of the case, especially as the application was made two days before the polling day, and a fortnight after the issue of the election address complained of, there was no adequate ground in law for the issue of an injunction. The question of principle he did not decide, and it remains an interesting speculation how far it is sound and not merely ingenious.

Accidents at Places of Amusement.

A DECISION in which a plaintiff was awarded £1,000 for injuries received as the result of an accident which occurred to her at a side-show in a place of amusement, was reversed last week by the Court of Appeal: *Sheehan* v. *Dreamland, Margate, Limited, Times*, 30th ult. In arriving at their decision the Court of Appeal applied the case of *Cox* v. *Coulson*, 1916, 2 K. B. 177. In the present case the defendants had let a portion of their land to a man who erected on it a side-show known as the Luna Ball. The defendants (who had an arrangement with the owner of the side-show for readjusting the financial relations existing between them) issued a ticket to the plaintiff which admitted her to this side-show. On entering the side-show she was invited to sit on a balloon-like structure which, by a process of inflation, raised the occupant to a height of about twelve feet. Deflation ensued and these processes were repeated until the occupant was thrown off. The plaintiff, in compliance with erroneous instructions given by the attendant (who was not the servant of the defendants) sat with her feet towards the centre of the structure and, as the result of her fall, suffered serious injury to her neck. The basis of the decision of the Court of Appeal seems to have been that no negligence had been proved against the defendants, their relations with the plaintiff being merely those of invitor and invitee. It is, of course, difficult to ensure that perfect supervision shall be exercised by a company which co-ordinates an agglomeration of small side-shows on their property. One cannot, however, help feeling sympathy with the plaintiff, as her accident seems to have been entirely due to obeying the instructions of the attendant in the side-show, upon whose expert knowledge she might reasonably have expected to be able to rely with confidence. Persons indulging in amusements of the "trick" variety, even when endowed with more than average intelligence, are on such occasions naturally prone to abandon, for the time being, their own initiative, and to assume that instructions given to them by the presiding genius are correct, even if they appear to be not in accordance with common sense. The result, however, gives cause for speculation as to whether, if the action had been instituted against the owner of the side-show for the negligence of his servant, the plaintiff would have met with success.

Sentence in Absence of Convicted Felon.

IT HAS LONG been an elementary rule of the Criminal Law that, in a trial for felony as distinguished from misdemeanour or a summary jurisdiction offence, it is not possible to pass sentence in the absence of the accused. The reason, as is well known, is that all felonies were at Common Law capital, and in the olden days a capital sentence was followed immediately by execution, the only interval allowed being that necessary for the administration of absolution after confession by a priest. As the rule is well known, it is somewhat strange that a sentence should have been passed *per incuriam* at Assizes by a High Court judge; but such an oversight actually occurred in *Rex* v. *Hales, Times*, 5th inst., The prisoner was tried and convicted of larceny at Oxford Assizes; sentence was postponed, but was subsequently passed by the same judge at Worcester Assizes, before the conclusion of his circuit tour. At the latter town the prisoner was not present, so that the sentence was passed in his absence. This technical irregularity of procedure was aggravated by the fact that the prisoner had been undefended at the trial, and had neither called witnesses nor put in documents; yet counsel for the prosecution had addressed the jury a second time—thereby breaking an immemorial rule of legal etiquette which forbids counsel to reply where prisoner is undefended, and raises no points of law requiring comment. In view of this latter departure from customary procedure, the Court of Criminal Appeal could not say that, notwithstanding the technical irregularity, there had been no substantial miscarriage of justice; and therefore the conviction was quashed.

Lord Loreburn: An Appreciation.

THE death of Lord LOREBURN, at the age of seventy-seven, marks the removal of another of the "Elder Statesmen" surviving from the Gladstonian period, who have done so much to shape the political ideals of the English people. For Lord LOREBURN was essentially a lawyer-statesman of Mr. GLADSTONE'S school. Lofty in ideals, noble in purpose, strong in action, he was at one and the same time a successful man of the world, a lawyer and politician, and a deeply serious statesman. He had the high personal dignity as well as the simplicity of life which marked the finest characters of the late Victorian Age. England, indeed, has been unusually fortunate in nearly always securing for the Woolsack men who are not only successful practitioners in a profession which is necessarily somewhat worldly, but also possessed of a strong sense of public duty and a deep attachment to ideals which practical men are apt to regard as academic.

The career of Lord LOREBURN falls naturally into three periods: his long struggle for success at the Bar, his maturity as an influential law-officer or party leader, and his memorable, though

all too brief, tenancy of the Woolsack. In each epoch the man was the same. Personal integrity, a massive and thorough grip of detail, a luminous regard for principle: these were his characteristics from the day he first became known as an Oxford undergraduate to his rivals and contemporaries of later life. He did well at Oxford, but he would probably have done better if he had not shown a certain disdain for the pursuit of lesser prizes in the academic world. He left the University with the reputation of one who would almost certainly succeed in whatever profession he might adopt, and who would quite certainly never stoop to succeed by any unworthy artifice.

At the Bar he grew slowly into practice. It was in the Commercial Court that, like nearly all our great common law judges of the last half-century, he first showed his power. Maritime Law and International Law gave chief scope for his abilities, but he was good all round. Massive weight of personality, massive solidity of argument, a certain massive lucidity of exposition—these made him effective with special juries. With judges, curiously enough, he was not quite so successful. This was partly due to a certain impatience of mind which made him feel it rather undignified to explain twice what he had made clear once, or to enter into argument with interrupting judges. In fact he was one of those men who are born to command rather than to persuade, and are most successful when dealing with plain men who respect and submit to the moral force of a commanding character and a scholarly intellect.

When approaching fifty years of age REID became a law-officer in Mr. GLADSTONE's Cabinet of 1893. There can be no doubt that it was Mr. GLADSTONE's personal appreciation of a stalwart character which led him to promote one who had hitherto taken no very conspicuous part in Parliament. But REID soon proved as successful in the capacity of minister as he had been at the Commercial Bar. His honesty and weight carried all before it in a legal argument of political type. As a constitutional lawyer he rendered the greatest service to his party, and as an international lawyer he increased the respect of foreign statesmen and tribunals for English interpretation of law.

Finally, in December, 1905, he became Lord Chancellor in Sir HENRY CAMPBELL-BANNERMAN's Ministry. But his health gave way and in 1912 he had to retire. Nevertheless in those years his love of principle showed itself in the fight he put up against attempts to induce him to elevate to the magisterial bench political supporters of his own party. It was natural for Lord LOREBURN's party to desire such elevations to be on party lines, since Lord HALSBURY had given the magisterial bench a decidedly Conservative colour. But two blacks do not make a white. Lord LOREBURN fought this party cry and prevailed. He won by his action the respect of all political parties.

Obligations in Honour.

ON the 30th ult., the First Division of the Court of Session in Scotland disposed of a highly interesting case raised over the liquidation of the Clyde Marine Insurance Company, Limited. The opinions of the Lord President and other members of that appellate division of the Supreme Court in Scotland must set English lawyers a-thinking as to the soundness of the well-known decision in *Ex parte James*, 9 Ch. App. 609, as to the sphere of the Law Courts as Courts of Morals. Recent decisions and notably *Scranton's Trustee* v. *Pearse*, 1922, 2 Ch. 87 (where all the intermediate authorities are fully discussed), have reflected the present judicial mind upon the English Bench that the opinion—in particular of JAMES, L.J.,—in the first case must not be pushed too far.

The company in question had carried on business as an underwriter of marine risks in London; but, being unfortunate, it went into voluntary liquidation. Being registered in Scotland, all questions arising in the liquidation fell to be determined by the Scottish Courts. Prior to its collapse the company had, through its underwriting representative, initialled a number of "long slips" or "closing slips," as the warrants, when presented to it by the brokers on behalf of the shipowners, for the issue of formal sea policies. These "slips" bound the company in honour to issue such policies. But the insured could not compel the company by an action at law to do so. Rather a queer, but, nevertheless, not uncommon situation. The solvent debtor repudiates his word at the peril of the loss of all reputation. Insolvency, of course, materially changes the aspect in such matters. Accordingly, the Scottish Court was asked to return an answer to the question: Was the liquidator—an Englishman, by the way,—bound to observe the honourable obligation of this Scottish company when it had not in fact issued policies?

Now, it was the delightful life task of the illustrious French civilian, POTHIER, himself a man of dazzling rectitude, to lay down, with fine discrimination, the rules by which obligations depending on conscience only could not be pressed before the Civil Courts, leaving as the supreme consolation for the unlucky creditor in such a case the one ray of hope for the recovery of his debt in the fact that his debtor would not receive absolution from the Church of Rome except upon the condition of his respecting and settling his debt of honour. And, as Lord DUNEDIN, when sitting some years ago as President of the Court of Session, said: "Civil Courts do not sit for the adjustment of claims of any kind sounding merely in honour. Honourable understandings have no right of audience in our Law Courts." Either, as he said, there is a legal agreement or there is not. Still, the holders of the "slips" in the test action under consideration claimed that the liquidator, even in a voluntary liquidation, and notwithstanding it was not subject to the supervision of the court, was in the position of an officer of the court, and no court ever sanctions shady and dishonourable actions on the part of its officers. It may be thought that POTHIER, to whom Scottish lawyers frequently appeal, would have denied the assistance of the courts to such a claim.

The proposition so put, however, seems so far good according to English law. JAMES, L.J., distinguished for his mastery of English Equity Law, tersely observed that when the court found money in the hands of an officer of the court belonging in equity to someone else, the court set an example to the world by ordering its officer to pay it to the person really entitled to it. "The Court of Bankruptcy," as he somewhat epigrammatically stated, "ought to be as honest as other people." In the case then before the court a trustee in bankruptcy had made an execution creditor disgorge certain proceeds from the sale of his debtor's goods passed over to him by the sheriff upon the erroneous assumption in law that as trustee he had a good claim to make such a demand. But as he had not in law any such right, the English Courts made an order upon him for the return of the money. Similarly, trustees in bankruptcy have been directed by the English Courts to reimburse people who have, for instance, to the knowledge of such trustees paid premiums to keep up life insurance policies for the benefit of creditors. It would have been unconscionable for the general creditors in such circumstances to repudiate the claims of such salvors. But, as one of the Scottish judges remarked in the case under review, this somewhat peculiar jurisdiction exercised by the English Courts is not familiar to Scottish lawyers. Creditors can only protect themselves by vouched claims against the insolvency of their debtors. The Scottish Courts do not discharge the functions of eleemosynary institutions or constitute themselves into Recovery Courts for Honour Debts. It is suggested that the English Courts are in the same position.

It is a very large extension of the doctrine expounded by JAMES, L.J., to allow creditors with indisputable claims in honour against their debtors to maintain, even under English law, that such claims, admittedly unenforceable by action at law against their debtors when solvent, become immediately prestable

whenever their bankruptcy or liquidation ensues, because, forsooth, the court will see that its officers, winding up such debtors, act honourably. Such a grotesque claim, if it were to succeed, would upset all bankruptcy or liquidation rules in England or anywhere else by which creditors with valid claims are only admitted to proof. Besides, there is large room for dispute, as SALTER, J., has indicated, as to what constitutes a debt of honour. Even judges have differed, as well as business men, over the "ethical proprieties" of certain attitudes, say, upon the recognition of bets or wagers.

The Scottish Court had really no difficulty in coming to the conclusion that the liquidator before them was under no obligation to the insured to issue policies against the "slips," or to recognize losses covered or intended to be covered by them. The liquidator was not in fact carrying on the marine insurance business of the company and he had himself handled no moneys upon which any claims in equity were made against him by third parties. But, curiously enough, he sought to complete policies where the risk had run off. This, as CLYDE, L.P., said, was equivalent to "Heads I win: tails you lose." And, even where he had issued policies under the mistaken impression in law that he was bound to do so, these policies were directed to be cancelled, and as no premiums had been actually paid to him, no premiums fell to be refunded by him.

The judgment is no doubt somewhat hard upon the shipowners with any possibility of loss under policies which they thought had been effected. But compassion seldom is an aid to sound legal judgment. If all debts or obligations based on honour alone were to be treated as actionable, there never would be any dull period in our courts. Petitions of right, we fancy, would flow in constant stream in respect of alleged honourable pacts by Government officials in all Departments. All our pleaders would be always in merry mood. More judges would certainly be necessary. Clamant need, it may be feared, would arise for the assistance, then, of the female sex, not only at the Bar and in the jury box, but on the Bench. But such a forecast is only a dream. Let us, following POTHIER, commiserate all unfortunate litigants who have insolvent companies for their debtors. Such debtors have no soul to be saved and so cannot be shriven. Thus, their creditors are bereft, too, of the sanctions of the Forum of the Conscience, if not also, of the Confessional!

Q.

The Monroe Doctrine.

LAST Sunday was the Centenary of the Monroe Doctrine. It is being celebrated with becoming ceremonial by the political, the legal, and the academic world of the United States. Such an anniversary would be interesting in any event, but it is especially interesting to-day. For the Monroe Doctrine is now far and away the most potent juristic weapon which International Law has placed in the hands of any body of statesmen. Its only rival in importance is the League of Nations Covenant. And that, although *in esse* a not inconsiderable force, and *in posse*, let us hope, a still greater instrument for the regulation of international life, has not yet attained the world respect which is paid to the present-day interpretation of President Monroe's fateful presidential message.

The Monroe Doctrine, as a matter of fact, is what psychologists would call a "complex"; it is a bundle of ideals belonging to different spheres of human activity. From the academic standpoint, it is the embodiment of a very remarkable historical event: that event which shaped the future of the New World. From the political standpoint, it is a massive factor of world-politics, ominous or hopeful according to the horoscope we cast of its future history and development at the hands of American Imperialists—who have already turned it away from its historical justification and given it a new purpose which may be better or may be worse. From the standpoint of the international lawyer it is the classical example of the importance of "Convention" in International Jurisprudence—rules which all the world respects and observes, although they are based neither on the inveterate custom which is called the Law of Nations, nor yet on a special treaty, widely accepted and signed by all great powers, which may be said to modify by a sort of International Legislation the rules of International Law. The Monroe Doctrine, on the contrary, is an example of "Squatters' rights" or of "Prescription": it is a claim to exclude certain rights of other nations in a certain sphere of the world, based not on legal right, but on a *de facto* assertion successfully maintained. Its only justification in a legal sense is the maxim which declares possession to be nine points of the law. It will be convenient to discuss the doctrine briefly in each of these three aspects.

As an academic event in the history of the world the Monroe Doctrine has a most striking origin. It came into being in 1823, just eight years after Waterloo, and after the magnanimous—if not wholly democratic or liberal—resettlement of European affairs which the victors in the Napoleonic War had imposed on France. The Holy Alliance, as the Congress of Powers was called, was endeavouring to secure the rule of Europe in accordance with law and right, not with force, and not with any creed which grants the spoils to the victors. In other words, they were attempting to do what Woodrow Wilson attempted in 1919; but the place of a League of Nations, based on the recognition of "self-determination," was taken by that of a Congress of Europe based on the principle of "legitimism." Wilson's doctrine is that the world, so far as feasible, should be apportioned into political entities, and ruled in accordance with the common will of peoples clearly cognizable as such. Metternich and Alexander, on the contrary, thought that the world should be partitioned in accordance with the existing territorial claims of dynasties, and ruled in accordance with the existing constitution, despotic or popular, of each sovereign state. There is some difference in the colour and the orientation of the two ideals; but each had the merit of placing right above might, and the sanctity of law above the self interest of kings.

Well, the settlement of the Treaty of Paris broke down much as the Treaty of Versailles is breaking down. Not, however, through the aggression of any of the victors. But simply because it ignored realities. Mankind is a growing society and it will not be constrained long in a progressive age within the fetters of any artificial rule—whether it be that of legitimism or that of self-determination. Artificial arrangements will break down before the urge of economic necessities, of social customs, of moral ideals. The subject nations of the West and East, the Spanish colonies in America, the Italian subject-states of Austria, the Christian tributaries of the Ottoman power—all these refused to see or endure the virtue of legitimism. They rose in revolt. The Powers called on each other to crush them—in the name of the Treaty of Paris and the sacred body of the Holy Alliance with its world-settlement on lines of legitimism.

It was an awkward hour for England. Russia, Prussia, Austria, and even France were despotic or semi-despotic States and had no sympathy with the uprising of distressed nationalities. They were prepared to enforce the Treaty-Settlement upon the revolted subjects of Spain, Austria, Turkey. They were prepared to use their armies and their navies to that end. The English people, lovers of their ancient liberties and sympathizers with oppressed democracies, especially when the tyrants were Roman Catholics or Moslems, felt quite differently; they were not disposed to crush the risings of libertarian enthusiasts. Nor was the English Government. Least of all was Canning, then Foreign Secretary and afterwards Premier.

But it was not easy for England to break with her allies. Moreover, in the strict letter of the Treaty of Paris the Holy Alliance were right. England never has been a nation of treaty-breakers, and so they hesitated to show their sympathy with the subject states. In this dilemma the United States stepped in. They were not parties to the Holy Alliance and not bound by the treaty doctrine of Legitimacy. They were democrats and passionately against the Monarchy of Spain, which they hated, partly because Spaniards are Latin, not Anglo-Saxon, partly because they are Romanist, and partly because they were tyrants. The United States was ready to recognize the insurgent republics of South America, and to help them against Spain. But it was not quite prepared to fight the Holy Alliance on their behalf. Certainly it was not prepared to fight England, if Canning and Castlereagh had felt bound by treaty-obligations to do what they would have hated to do—assist the Holy Alliance with their navy and army.

But if England and America could agree upon a common line of action in the New World, recognizing the new states and forbidding the Holy Alliance to intervene, it was clear that all would be well. The Powers would never risk a rupture with England, and would, indeed, be powerless with the English navy hostile. So President Monroe sounded the English Cabinet to see whether he could rely upon its neutrality—he could hardly expect its active sympathy. The negotiations have always been a profoundly kept secret. But negotiations there undoubtedly were. And at last Canning made it clear that, although he could not himself violate the Treaty of Paris by which he was bound, he would give the most active and manifest sympathy to America if she defied a document she had not signed.

Thus reassured, President Monroe, on the memorable day of 2nd December, 1823, sent to Congress the Presidential Message

which is the foundation of the Monroe Doctrine. He warned Europe to keep "hands off" any South American State struggling to be free. He declared that no European Power would in future be allowed to acquire new territories or re-conquer old ones in the New World. "In the wars of the European Powers in matters relating to themselves we have never taken any part nor does it comport our policy to do so . . . But with the governments" [in South America] "who have declared their independence and maintained it . . . we could not view any interposition for the purpose . . . of controlling . . . their destiny by any European Power in any other light than the manifestation of an unfriendly disposition towards the United States . . . The American Continents . . . are henceforth not to be considered as subjects for future colonization by any European Powers."

The Holy Alliance, finding that Canning and Castlereagh would not condemn and indeed approved of this declaration, had no option but to accept it. Then came into being the second, or political stage, of the Monroe Doctrine. Gradually it expanded into a political claim of Hegemony for the United States over the whole of South and Central America. They would protect their Republics against European attempts to collect debts by force or other European intervention; but they would themselves intervene to "maintain good government." In Roosevelt's hands, finally, the doctrine became one of annexation, pure and simple. Cuba, Haiti, Puerto Rico, Panama, Guatemala—under the disguise of Protectorates or financial wards or otherwise—have been gradually controlled and subjected to America. The Philippines and other island groups in Asia or Oceana have been annexed. The Monroe Doctrine, from being a doctrine of defence, has become a political weapon of counter-attack on the Old World in the interests of "Americanism." Many old-fashioned Americans view with alarm this movement of world-imperialism, the end of which is not yet.

In its third aspect, as a doctrine of International Law, the Monroe Doctrine is unique. For a discussion of the complicated juristic principles which underlie it we can only refer interested readers to Hall's International Law, where this tangled problem is ably discussed. But we think that the Monroe Doctrine, like the British pre-war claim to a world-wide naval supremacy in all the seas of the globe, now definitely abandoned, must be regarded as marking a tendency towards the recognition of "super-sovereignty" in international affairs. By this we mean a claim of one or more states to have a certain limited control over a group of other states whose independence and equal sovereignty is nominally admitted. The Powers of Europe have for a century put forward in practice a similar claim as regards the lesser Balkan States. Such claims to super-sovereignty may be based either on (1) agreement, *e.g.*, the Treaty of Versailles confers a limited super-sovereignty on the Council of the League of Nations, or (2) upon active prescriptive possession against the will of the dominated states. This latter is the form which the Monroe Doctrine has taken. Thus expressed, it will be seen that the Monroe Doctrine and the League of Nations represent two rival and conflicting types of claim to international super-sovereignty of a limited kind, one based on power, and the other on contract. It is not unintelligible, therefore, that ardent adherents of the Monroe Doctrine in the United States feel a natural antipathy to the more truly legalistic rival principle embodied in the League of Nations.

Reviews.

Town Planning.

THE LAW AND PRACTICE OF TOWN PLANNING. By SYDNEY DAVEY, M.A., LL.B., Barrister-at-Law, and FRANCIS C. MINSHULL, LL.M., Chief Assistant Solicitor to the Corporation of Birmingham. Butterworth & Co. 25s. net.

TOWN PLANNING. Model Clauses, July, 1923. Issued by the Minister of Health. H.M. Stationery Office. 1s. 6d. net.

It is an unfortunate circumstance that Town Planning is a thing of very recent growth, while towns themselves have been in existence—if not since the days of the Dinosaur and her eggs—at any rate from the time of Tut-ankh-Amen. In reason it should have been the other way about. Early man should have done the planning and then his successors might have been trusted to build the towns. However, things have not been ordered so, and it was a trifle late when in 1909 the first Town Planning Act came into force. Since then there have been the Acts of 1919 and of the present year, and by separating the parts relating to this matter from the general housing provisions, we get the title "the Town Planning Acts, 1909 to 1923. The Ministry of Health which, within the limits of practicability, we do not doubt, attempts to work this new development efficiently, has amplified the statutory provisions by the Town Planning Regulations of 1921. These define the procedure on the passing by a local authority of a resolution to prepare a town planning scheme; then they prescribe the preliminary statement of the proposals for development, to be followed by the draft of the town planning scheme, and the submission of the scheme to the Minister. But since the scheme may not be immediately carried out, meanwhile private building operations would be hindered. Hence s. 45 of the Act of 1919 empowers the Minister specially or generally, to order that the development of estates and building operations may be permitted to proceed pending the approval of the scheme, and the Town Planning (General Interim Development) Order, 1922, was made under this section. The Forms which have been issued include Model Forms of Preliminary Statement; of Resolutions, Advertisements and Notices; and Model Clauses for use in the preparation of schemes. These are issued in accordance with s. 55 of the Act of 1909, and deal with matters specified as necessary in Sched. IV to the Act.

The whole of the procedure is lucidly explained in the useful work on Town Planning which Mr. Davey and Mr. Minshull have prepared, and the relevant statutory provisions, and the forms are given in Appendices. The model clauses are printed with useful annotations. The authors use the clauses dated last February. The Clauses noticed in our heading are an issue of last July, but they do not appear to differ from the earlier ones, save that clauses 42 to 62 are omitted, probably because they are not important for the working part of a scheme.

Mr. Davey and Mr. Minshull call attention to the use of the expression "amenity" in town planning legislation. The word was considered in *Re Ellis and Ruislip-Northwood U.D.C.*, 1920, 1 K.B. 343, and Scrutton, L.J., who said it was novel in an Act of Parliament, regarded it synonymous with "pleasant circumstances or features, advantages." "Wide streets and plenty of air and room between houses seem clearly to be amenities." This was on a passage in s. 59 (2) of the Act of 1909, which has been repealed as impracticable; but amenity is mentioned in s. 54 as one of the primary objects of a town planning scheme, and several of the model clauses are framed accordingly, *e.g.*, the making of grass margins to streets and planting trees and shrubs (cl. 13); the forbidding of advertisements displayed in such a position or manner as to injure the amenity of any part of the area (cl. 39); compelling owners of private gardens to keep them so as not to injure the amenities of the neighbourhood (cl. 40). And all the elaborate clauses as to "land units," "building units," and "zones," which we must leave the reader to study for himself, are intended to conduce to the orderly development and arrangement and the amenity of the area. But the making of town planning schemes has not been very rapid so far. Mr. Davey and Mr. Minshull give a list of twelve schemes which have been approved dating from 1913 to 1922. They include three schemes in the Birmingham district; the Ruislip-Northwood scheme; and schemes for Rochdale, North Bromsgrove, Chesterfield, Otley, Leeds, Hunslet, Wallasey, and Luton. With the efforts being made to overtake arrears of building the present is a favourable time for multiplying schemes, and the authors have done a public service in making the necessary procedure accessible in so convenient and interesting a form.

The Law of Fixtures.

THE LAW RELATING TO FIXTURES. By BENAIAH W. ADKIN, Vice-Principal of the College of Estate Management, Barrister-at-Law, and DAVID BOWEN, Barrister-at-Law. Authorized by the College of Estate Management as one of its Series of Text-books. The Estates Gazette Ltd. 15s.

Few questions raise such difficult questions as the right to remove fixtures, and this book will be a very welcome and helpful guide to practitioners who have to consider the matter. There is, in any given case, the initial difficulty of deciding whether an article is a fixture or not, and if it is a fixture, whether it is under the circumstances of the case removable; and for the latter purpose the relations of the parties have to be taken into account—are they landlord and tenant, executor and heir, executor of tenant for life and remainderman, and sometimes the third party owner of the fixture and a mortgagee. Then the matter has to be considered either according to the common law rights, or according to these rights as altered by statute or by contract.

These matters are very lucidly dealt with in the present work. The mode of annexation goes a long way in determining whether an article is a fixture or not, but it is not decisive. Provided an article can be removed without actually destroying it, it may be a chattel although firmly fixed to the land or building; while it may be a fixture though merely resting by its own weight. Under the "General Rule as to Annexation" a useful list is given of the articles which have been held to be fixtures or the reverse. Still more important than the mode of annexation is the object of the annexation—whether the article is attached in order by its use to make the land or building more valuable as such; or whether it is attached so as to make the article of more use as

a chattel. But though there are leading cases, such as *Holland v. Hodgson*, L.R. 7, C.P. 335, and others which are collected here, which purport to apply this principle, we have never been able to satisfy ourselves that it is right. The object of a loom is the use of the loom as such notwithstanding that it contributes to the value of the building as a mill or factory. But the cases are to the contrary, and Mr. Adkin's and Mr. Bowen's presentment of them makes the subject as clear as is practicable. The difficulties which may still arise are shewn by *Pole-Carew v. Western Counties &c. Co.*, 1920, 2 Ch. 97, the case of "towers" and other plant for making sulphuric acid, which went to the Court of Appeal. But it involved also the point that a tenant may deprive himself of his right to remove trade fixtures by the terms of his lease; in particular by surrendering his lease and taking a new lease with a covenant to yield up fixtures. The effect of such covenants is considered in Chap. VII, and also the effect of the *ejusdem generis* rule, with reference to *Bishop v. Elliott*, 11 Ex. 113, and *Lambourne v. McLellan*, 1903, 2 Ch. 268. Altogether the book is a very capable and interesting handling of an important and difficult subject.

Books of the Week.

Banking Law.—Banking Law with Forms. By WILLIAM WALLACE, Advocate, late Sheriff-Substitute of Argyll, and ALLAN M'NEIL, S.S.C., Edinburgh, Lecturer on Banking in the University of Edinburgh. 5th edition. Revised and Enlarged by ALLAN M'NEIL. W. Green & Son, Ltd. 20s. net.

Copyright Cases, 1922-3.—By E. J. MACGILLIVRAY, LL.B. (Cantab), Barrister-at-Law. The Publishers' Association, Stationers' Hall Court.

Judicial Review.—December. Vol. 35, No. 4. W. Green and Son, Ltd. 5s. net.

Journal of Comparative Legislation and International Law.—Edited for The Society of Comparative Legislation by Sir LYNDEN MACASSEY, K.B.E., K.C., LL.D., and C. A. BEDWELL, Esq. 3rd series, part 4. Society of Comparative Legislation. 6s. net.

Mines and Minerals.—The Mines and Quarries Acts. With Notes. By DAVID BOWEN, Barrister-at-Law. Sweet & Maxwell, Ltd. 16s. 6d. net.

Real Property.—Real Property Law and Conveyancing in a Nutshell, including the most important changes made by the Law of Property Act, 1922. By MARSTON GARSIA, B.A., Barrister-at-Law. Sweet & Maxwell, Ltd. 5s. net.

Rent Restriction.—Leading Cases on Rent Restriction. With an Introductory Outline. By ALEXANDER CAIRNS, Barrister-at-Law. Stevens & Sons, Ltd. 5s. net.

Criminal Law.—Criminal Appeal Cases. Edited by HERMAN COHEN, Barrister-at-Law. July 27th, 30th, 31st; August 13th; October 15th, 16th, 17th, 19th, 22nd, 29th, 1923. Sweet & Maxwell, Ltd. 7s. 6d. net.

Criminal Trials.—Dramatic Days at The Old Bailey. By CHARLES KINGSTON. Stanley Paul & Co., Ltd. 12s. 6d. net.

Correspondence.

Times of Coroners' Inquests.

[To the Editor of the Solicitors' Journal and Weekly Reporter.]

Sir,—I do not know whether it would be of interest to your readers to know of the somewhat unusual times at which some of our coroners hold their inquests. It is, of course, a well known fact that many solicitors and barristers attend inquests on behalf of various parties interested, and I do suggest that these inquests might be fixed at times which are generally convenient to the members of the profession.

Certain coroners hold their inquests early in the morning. For instance, in a fairly remote London suburb, they are usually held at 9.30 a.m. and if counsel or solicitors have to get there from other parts of London, it is extremely inconvenient.

Other coroners around London hold them at 5.30 or 6.30 in the evening, which is equally inconvenient to most of the members of the legal profession.

I think this is a matter which might be ventilated in public, because I do feel that not only are the members of the profession considerably inconvenienced, but also the larger amount of witnesses, etcetera, who have to attend, are put to equal inconvenience. Perhaps, if attention was called to it in your paper, some of the coroners would try and think of other people, as well as themselves.

I may say I do not refer to the large majority of coroners actually in London, because with them it is usually "a whole time job," whereas with some of those on the outskirts of London, it is worked in with other work.

30th November. SOLICITOR.

CASES OF THE WEEK.

House of Lords.

EDELL *v.* DULIEU. 13th Nov.

LANDLORD AND TENANT—AGRICULTURAL HOLDING—LEASE—NOTICE TO QUIT—LENGTH OF NOTICE—AGRICULTURE ACT, 1920, 10 & 11 Geo. 5, c. 76, s. 28.

A farm was let by the plaintiffs to the defendants for a term of seven, fourteen or twenty-one years from Michaelmas, 1915, and either party was empowered to determine the lease at the end of the first seven or fourteen years by giving six months' notice in writing. In February, 1922, the plaintiffs gave notice of their intention to terminate the tenancy at Michaelmas, 1922, the end of the first seven years. In an action by the plaintiffs for possession the defendants contended that the notice was bad by reason of s. 28 of the Agriculture Act, 1920.

Held, that as s. 28 applied to all tenancies of agricultural holdings, the notice given was insufficient.

This was an appeal from an order of the Court of Appeal, 1923, 2 K.B. 247, 67 SOL. J. 497, reversing a judgment of the Divisional Court, 1923, 1 K.B. 533, 67 SOL. J. 334, and raised a short point whether a certain notice to quit ought to be a six months' or a twelve months' notice. The plaintiffs, who were the owners of a farm, demised it by a lease dated 30th September, 1915, to the defendants for a period of seven, fourteen or twenty-one years. The lease provided that if either party should be desirous of putting an end to the demise at the end of the first seven or fourteen years of the term they might do so by giving six months' notice in writing. The lessors being desirous that the term should cease and determine at the end of seven years, gave rather more than six months' notice to quit, that is, they gave on 15th February, 1922, a notice requiring the lease to determine on 29th September in that year, which was the end of the first seven years. The defendants having refused to give up possession, the plaintiffs commenced this action for ejectment and applied for judgment under Ord. 14. The defendants contended that they were entitled to twelve months' notice, and that the notice was invalid. Master Jelf decided in favour of the defendants, but on appeal his decision was reversed by the Divisional Court, which in turn was reversed by the Court of Appeal. It was contended on behalf of the tenants that the notice was invalid as they were entitled to a twelve months' notice under s. 28 of the Agriculture Act, 1920, which says: "Notwithstanding any provision in a contract of tenancy to the contrary, a notice to quit a holding shall be invalid if it purports to terminate the tenancy before the expiration of twelve months from the end of the then current year of tenancy." On the other hand the appellants contended that this lease was not within s. 28 at all, but would have come within s. 13 if not made before the Act. Section 13 was as follows: "In the case of a tenancy of a holding for a term of two years or upwards the tenancy shall not terminate on the expiration of the term for which it was granted unless not less than one year nor more than two years before the date fixed for the expiration of the term a written notice has been given by either party to the other of his intention to terminate the tenancy, and any notice so given shall be deemed to be a notice to quit for the purposes of the Act of 1908 and of this Act."

The HOUSE (Lord CAVE, L.C., Lord DUNEDIN, Lord ATKINSON, Lord SUMNER and Lord BUCKMASTER), without calling on counsel for the respondents, dismissed the appeal.

The LORD CHANCELLOR said that the respondents contended that the notice to quit was invalid in consequence of the provisions of s. 28, which provided that "Notwithstanding any provision in a contract of tenancy to the contrary a notice to quit a holding shall be invalid if it purports to terminate the tenancy before the expiration of twelve months from the end of the then current year of tenancy," and s-s. (3) provided that the section should not apply to any notice given before the commencement of the Act. *Primâ facie* this case fell within the exact words of the section. This lease was a contract of tenancy because a contract of tenancy was defined by the Act of 1908, with which this statute was to be read, as meaning a letting of or agreement for letting land for a term of years or from year to year. Again, this was a notice to quit because the terms of s. 28 showed that a notice to quit included a notice purporting to terminate a tenancy. Thirdly, this was "the then current year of the tenancy," for it was that year of the twenty-one years which was current at the time when the notice was given. *Primâ facie* therefore the section covered this case. But it was said that s. 28 applied only to yearly tenancies, and it was pointed out that the earlier enactments dealing with this particular subject, namely, the length of a notice to quit, had been confined to yearly tenancies. The Act of 1908, s. 22, required a twelve months'

notice in case of a yearly tenancy. The Act of 1920 repealed s. 22 and it was said that as the repealed section was confined to yearly tenancies, this section must also be so confined. That argument however seemed to tell the other way. The repealed enactment was in terms confined to yearly tenancies; but in the new Act the reference to yearly tenancies was omitted, and in its stead there was the wide expression "a contract of tenancy." That argument therefore broke down. Then it was said that s. 13 dealt with tenancies for two years and upwards, that that section was confined to leases granted after the Act, and accordingly that s. 28 must be read as not applying to an existing lease for a term of years. He saw no inconsistency between the two sections. They dealt with different subject-matters, or at all events had different objects. The purpose and effect of s. 13 was that no future lease should come to an end unless at least a year before the expiration of the term a notice to quit was given, and that applied to all future leases including leases which did not contain power to determine the tenancy by notice. On the other hand, s. 28 seemed to apply only to cases where notice to quit was required, and among those cases would be both a tenancy from year to year and a tenancy for a term of years determinable by a notice to quit. In his opinion the intention of s. 28 was that, in all cases where a notice to quit was required, that notice should be invalid if it purported to terminate the tenancy before the expiration of twelve months from the end of the year of tenancy which was current when the notice was given. The wording of the statute was too strong for the appellants' contention and the construction put by the Court of Appeal on s. 28 was correct. The appeal would be dismissed with costs.—COUNSEL: *Schiller*, K.C., and *W. H. Duckworth*; *Compston*, K.C., and *F. Hinde*. SOLICITORS: *Edell & Co.*; *Ellis & Fairbairn*.

[Reported by S. E. WILLIAMS, Barrister-at-Law.]

MOSS STEAMSHIP CO. *v.* BOARD OF TRADE. 23rd November.

SHIPPING—CHARTER-PARTY—VOYAGE DIRECTED BY GOVERNMENT—INTERFERENCE WITH BUSINESS—LOSS TO CHARTERERS—COMPENSATION—INDEMNITY ACT, 1920, 10 & 11 Geo. 5, c. 48, s. 2, Sched. Part II.

The claimants chartered a ship for the purpose of their business, and the charter-party provided that if the ship was directed by the Government for a voyage (which happened), the direction was to be for the charterers' account. The voyage was not profitable, and the charterers could not charter another ship owing to the rise in rates. They now claimed compensation under the Indemnity Act, 1920, for interference with their business.

Held, that they were not entitled to compensation for the loss.

This was an appeal from a decision of the Court of Appeal, 1923, 1 K.B. 447, raising the question whether the appellants were entitled to recover compensation for loss resulting from interference with their business. The appellants were a steamship company whose ordinary business it was to run a line of steamers to the Mediterranean, and they chartered a ship for the purpose of its being employed on that business. Clause 32 of the charter-party provided that if during the currency of the charter the ship was directed by the Government for some voyage, the direction was to be for the charterers' account and the charter-party was to remain in force. The Government directed the ship to go to Cuba to load a cargo of sugar. The voyage was unprofitable to the charterers, and they lost the profit, £6,198, which they would have made if the ship had been used for the Mediterranean trade. The result of the directed voyage was a loss to the appellants of £14,758, and they were unable to minimise the loss by hiring another ship in consequence of the high rates ruling at the time. They sought to recover these two sums as compensation under the Indemnity Act, and the War Compensation Court by a majority awarded to them the two sums. The Court of Appeal reversed this decision and held that the charterers were not entitled to compensation. The charterers now appealed.

The LORD CHANCELLOR said that the appellants, in order to succeed in their claim, must show direct loss and damage suffered by them by reason of direct and particular interference with their property or business, and the main questions to be considered were: Was there direct and particular interference with the claimants' property or business? And, if so, did direct loss or damage result from that interference? On the first point it was plain that there was no interference with any property of the claimants. The charter-party did not create a demise of the vessel which remained the exclusive property of the owners, and the charterers had no more than a right by contract to have their goods carried by the vessel during the period of the charter. If, therefore, the claimants were to be successful, it must be on the ground that the direction given to the owners was a direct and particular interference with the charterers' business. In his opinion it was not such an interference. The direction was not given to the appellants and did not prevent them from carrying goods to the Mediterranean if they had or could obtain the shipping necessary for that purpose. No doubt it prevented the owners from performing their contractual obligation under the charter-party to carry goods for the appellants in this ship to the Mediterranean, and so made it more difficult for the appellants to get the goods so carried; but if this was an interference with the appellants' business, the interference was not a direct but a secondary and indirect result of the direction. As Sir Dunbar Barton pointed out in his judgment in the court below, an interference by requisition or otherwise with the property or business of an hotel, garage, factory or shop, might involve, as a consequence, loss or damage to a number of persons who had contracted with the owner of the property or business for the supply of goods or material or hiring or use of rooms or of cars or of the property itself; but in such cases the loss suffered by the contractors was not due to direct interference with their business, but was an indirect consequence of the interference by the Crown with the business of the owner with whom they had contracted. Such persons had no claim to compensation under the Indemnity Act, their claim being excluded by the word "direct," and in his opinion the same consideration applied in the present case. With regard to the claim for repayment of the £14,758 loss on the directed voyage, that loss did not result from the direction given by the Shipping Controller to the owner of the vessel, but from the express contract of the appellants contained in clause 32 of the charter-party to take the risk of any directed voyage. If the Shipping Controller by his direction created a condition of things which brought that clause into operation, it could not be said that by so doing he directly interfered with the appellants' business. At most he did that which, by reason of the appellants' contract, resulted in their undertaking the directed voyage, but that venture was the consequence, not of the direction, but of the contract. These considerations also provided an answer to the question whether if, contrary to his opinion, there was direct interference with the appellants' business, direct loss or damage resulted from such interference. He understood the expression in the statute, "direct loss or damage suffered by the claimant by reason of direct and particular interference," to mean loss or damage directly caused by such interference, and to exclude loss due to the intervention of other factors, such as the appellants' contract in clause 32 of the charter. If so, this would exclude any claim for the £14,758, even if otherwise capable of being sustained, though not the claim for the £6,198. But it was unnecessary to deal with that point, as, in his view, the claim wholly failed for the reasons stated. On the whole he was of opinion that the appellants' claim failed on the ground that there was no evidence of direct and particular interference with their property or business, and also as regarded the £14,758 on the ground that the loss of that sum was not direct loss within the meaning of the Act, and accordingly he moved that the appeal be dismissed with costs. He was asked by Lord SUMNER to say that he concurred in this judgment.

Lord HALDANE gave judgment to the same effect. But Lord FINLAY differed, and Lord PARMOOR agreed with Lord Finlay. COUNSEL: *Sir Leslie Scott*, K.C., and *Le Quesne*; *The Attorney-General* (*Sir Douglas Hogg*, K.C.), *MacKinnon*, K.C., and *Darby*. SOLICITORS: *Thomas Cooper & Co.* for *Hill, Dickinson & Co.*, Liverpool; *the Treasury Solicitor*.

[Reported by S. E. WILLIAMS, Barrister-at-Law.]

Court of Appeal.

POLE *v.* POLE. No. 1. 15th November.

WILL—REAL ESTATE—STRICT SETTLEMENT—LITIGATION—COMPROMISE—AGREEMENT INVOLVING SALE OF REAL ESTATE—ORDER OF COURT CONFIRMING AGREEMENT—PROCEEDS OF SALE FOLLOWING LIMITATIONS OF REAL ESTATE—FUND IN COURT—WHETHER REALTY OR PERSONALTY—RE-CONVERSION—EXECUTORY OR EXECUTED TRUSTS.

An order of the court, confirming an agreement between parties interested that real estate shall be sold, operates as a conversion as from the date of the order, and the real estate, therefore, becomes personalty, unless there should be a direction to re-invest in realty. Where, therefore, in 1868, such an order was made for the sale of real estate settled in strict settlement, and the proceeds of sale became a fund in court, the first person entitled under the limitations of the real estate to a vested estate of inheritance became entitled to the fund, and it was impossible to hold that the order operated as if there were a further settlement, or a direction to re-convert into real estate, or that it was an executory agreement, the terms of which could be remoulded later as events might require.

Burgess *v.* Booth, 1908, 2 Ch. 648, *followed*.

Decision of P. O. Lawrence, J., *affirmed*.

C. V. Pole, who died in 1864, by his will settled his real estate in strict settlement. At his death he was heavily in debt, and

his business affairs in confusion, and actions were brought by creditors and others against the estate. To put an end to the trouble, in 1867, all the parties interested executed an agreement by which all the estate, real and personal, was to be sold, and of the proceeds of sale four-fifths were to be paid to the creditors and legatees, and one-fifth was to follow the limitations contained in the will with regard to the real estate. This agreement was confirmed by the court in 1868, and an order was made which, after reciting that it was "a fit and proper compromise and for the benefit of the parties interested" directed that the agreement should be carried into effect; that the personal estate should be sold and the moneys carried to a "personal estate capital account," and that the real estate should also be sold and the proceeds paid to an account entitled "real estate account." By a subsequent order of court, dated 18th November, 1870, the real estate having been sold, it was ordered that of the funds in court, four-fifths were to be divided in accordance with the terms of the agreement of 1867, and one-fifth was to be carried to a separate account entitled "The fund which under the arrangement of 16th November, 1867, is to follow the limitations contained in the will of C. V. Pole with respect to his real estate, subject to duty." In 1922 the second and last tenant for life under the will of C. V. Pole died, and the question arose whether the fund in court belonged to the person who, on the death of that last life tenant, would have become entitled to the real estate of C. V. Pole as tenant in tail in possession, or whether the fund vested absolutely in the first tenant in tail by purchase under the limitations of the will, although such tenant in tail did not become entitled in possession. To decide the matter, this petition was taken out by H. A. P. Soppit, the person who, if the real estate had not been sold, would, under the limitations of the will, be at the present time the tenant in tail entitled in possession to C. V. Pole's real estate. He contended that, by the authority of *Fellow* v. *Jermyn*, 1877, W.N. 95, the fund in court should be treated as having been re-invested in land, and so, as devolving exactly as the land would have done, and that the court, in making the orders of 1868 and 1870, could not be deemed to exclude the persons entitled as tenants in tail in remainder in favour of the first tenant in tail by purchase. P. O. Lawrence, J., held that since the decision in *Burgess* v. *Booth*, *supra*, it was settled that an order of the court for the sale of real estate operated as a conversion from the date of the order, and therefore the real estate was converted into personalty as from the date of the order of 1868. When the court sanctioned that agreement, it became an executed, and not an executory, agreement, and the parties must be presumed to have known the law, under which the first tenant in tail by purchase would take the personalty absolutely. The petitioner appealed. The court dismissed the appeal.

Sir ERNEST POLLOCK, M.R., said that, following the decision in *Burgess* v. *Booth*, *supra*, and at any rate since the decision in *Sleed* v. *Preece*, 22 W.R. 432; L.R. 18 Eq. at p. 197, it was established "that an order of the court, rightfully made, for the sale of real estate operates as a conversion from the date of the order, so that the proceeds of the sale are personalty;" and as there was no provision made under the agreement that there should be any re-investment of that one-fifth share in realty, and no direction to that effect in the orders of 1868 and 1870, that one-fifth clearly remained personalty. It was also clear that the provision that that one-fifth was to follow the limitations contained in the will of C. V. Pole with respect to real estate could only be operative within a very limited degree; only down to the time when there was an estate of inheritance; that was down to the time when the first tenant in tail by purchase became entitled. It was said that the order of 1868 was made upon a mere agreement; that the court was not dealing with a settlement, nor with a will, nor with an express trust, but simply with a voluntary agreement. Even so, the order was made in common form, without any amplifications, without any ancillary provisions, and without any suitable directions to mould or alter the plain terms contained in the original agreement, and it was remarkable that no such ancillary provisions or directions were given to obviate what was now said to be a patent blunder. The court could not draw any inference that such ancillary provisions should be assumed, or that the order should be treated, as had been contended, as merely an interim order, under which all the questions raised could be further discussed and dealt with if and when occasion arose. The order was made after careful consideration, and presumably with due knowledge of its legal effect. The agreement arrived at, carried into effect by the order of the court made in respect of it, became just as rigid as any express trust or will, and to go back now, after fifty-six years, and to re-mould or add suitable provisions in order to carry out the presumed intention of the parties, would be to draw inferences without foundation. The appeal must therefore be dismissed.

WARRINGTON and SARGANT, L.JJ., delivered judgments to the same effect.—COUNSEL: *C. E. E. Jenkins*, K.C., and *R. W. Turnbull* for the petitioner; *Owen Thompson*, K.C., and *W. A. Peck* for the first tenant in tail by purchase; *C. P. Sanger* for the legal personal representatives of the testator. SOLICITORS: *Brooks, Jenkins & Co.*; *Saxton & Morgan*; *Young, Jackson, Beard & King.*

[Reported by G. T. WHITFIELD-HAYES, Barrister-at-Law.]

PICKLES *v.* **FOULSHAM.** No. 1. 20th and 21st November.

REVENUE—INCOME TAX—AGENT EMPLOYED ABROAD—RESIDENCE IN ENGLAND—CONTRACT FOR EMPLOYMENT IN WEST AFRICA—SALARY AND COMMISSION—POSSESSIONS OUT OF THE UNITED KINGDOM—INCOME TAX ACT, 1918, 8 & 9 Geo. 5, c. 40, Sched. D, Case V.

The respondent was employed by an English company under a contract made in England to be their district agent in West Africa, at a salary of £500, plus allowances and commission, which brought his earnings to considerably over £1,000 a year. He was to spend six months in England, during which his salary was to be £750. While in England he resided in a house which he had leased for the occupation of his wife and children while abroad. The Commissioners made an assessment upon him under Case V of Sched. D.

Held, that, assuming without deciding that the respondent was properly assessable as being resident in England, the salary and commission which he received and remitted to England was not income from a possession out of the United Kingdom under Case V, and the assessment must be discharged.

Decision of Rowlatt, J., 67 SOL. J., 810, *affirmed.*

Appeal by the Crown from a decision of Rowlatt, J., reported 67 SOL. J. 810. The respondent had appealed to the Special Commissioners against an assessment to income tax for the year ending 5th April, 1920, made under Case V of Sched. D, in respect of his "possessions" out of the United Kingdom. He was employed by an English company, under a contract made in England, as their agent in West Africa at a salary of £500 a year, plus certain allowances and commission guaranteed to exceed £500 a year. The engagement was for two years, of which six months was to be spent on furlough in England. While in England the respondent's salary was to be £750 a year, and he then lived at Blackpool, in a house which he had purchased for his wife and children to reside in while he was in Africa. The Special Commissioners held that he was resident in England, and confirmed the assessment, but on appeal Rowlatt, J., held that though the respondent was properly assessed to income tax as being resident in England, he had no "foreign possessions" within Case V, and therefore the assessment must be discharged. The Crown appealed.

THE COURT dismissed the Appeal. POLLOCK, M.R., said that in his opinion the point to be decided was an extremely narrow one. The Court had come to the conclusion that the decision of Rowlatt, J., was right. His Lordship then stated the facts and proceeded: The assessment was made upon Mr. Pickles under Sched. D, Case V, of the Income Tax Act, 1918, *i.e.*, he was assessed in respect of income received or remitted from possessions abroad. Two points were argued before Rowlatt. J.: (1) Whether the respondent was resident in the United Kingdom. That point was decided in favour of the Crown and there was no appeal on it. (2) On the point of law as defined by the Commissioners whether the respondent had been correctly assessed on the income received in or remitted to the United Kingdom out of profits made from foreign possessions. Attention would therefore be drawn to Case V of Sched. D, because the liability was limited to the sums received over here. There was a full argument upon the point before Rowlatt, J., and the Court could only deal with that point and the decision on it. He had held that it was not possible to say that the respondent had got a possession out of the United Kingdom, and he, his lordship, agreed. It had been strenuously argued by counsel for the Crown that the word "possession" covered every kind of property, including a contractual right, and for that he relied on expressions in the judgments of Lord Herschell and Lord Macnaghten in the House of Lords in *Colquhoun* v. *Brooks*, 14 App. Cas., 493. Having read both speeches he, (his lordship) was satisfied that Lord Macnaghten had in his mind some form of property producing income, such as a trade or business in which capital was employed, and did not intend to include contractual rights. There was a sharp division between ownership of property and contractual rights—for example, the difference between the positions of an owner and a charterer of a ship. The distinction was clearly preserved in Sched. D and its subdivisions between possessory and contractual rights. For the reasons given he, his lordship, did not think that *Colquhoun* v. *Brooks* (*supra*) applied to the case, or that Case V applied to the respondent's income under his contract. There was an antithesis between matters which fell under Case II and under Case V. The respondent had had the wrong case invoked against him in respect of the amounts remitted by him to England; that was the only point decided by Rowlatt, J. Mr. Hills had asked the Court to send the case

back to the Commissioners under s. 149 of the Act for re-assessment. But it would be very unfortunate if the decision were taken to be of a wide-reaching nature. What the liability of the respondent might be if a fresh assessment under another case were made he, his lordship, did not know; it might be that he might be liable on quite a different basis. But at any rate he was not liable under Case V. The appeal would be dismissed with costs.

WARRINGTON, L.J., delivered judgment to the same effect, observing that the very serious question arose whether having regard to the decision in *Colquhoun* v. *Brooks* (*supra*) the respondent could be assessed at all, and ASTBURY, J., concurred.—COUNSEL: *R. P. Hills* (*Sir T. Inskip*, Solicitor-General, with him); *Latter*, K.C., and *G. R. Blanco White*.—SOLICITORS: *Solicitor of Inland Revenue*; *Withall & Withall*.

[Reported by H. LANGFORD LEWIS, Barrister-at-Law.]

High Court—Chancery Division.

SWAN *v.* **SINCLAIR.** P. O. Lawrence, J. 25th October.

EASEMENT — RIGHT OF WAY — NON-USER — ABANDONMENT.

Mere non-user is not conclusive evidence of abandonment of an easement of right of way, but non-formation or user of the way, and continuous obstruction of the site, without complaint for upwards of fifty years was held to be sufficient for the court to infer abandonment.

Ward *v.* Ward, 1851, 7 Exch. 838, *distinguished*.

This was an action claiming a right of way. The facts were as follows:—In 1871 certain houses and shops in Essex-road, Islington, were put up for sale in eleven lots. One condition provided that a strip of land fifteen feet wide, running the entire length at the rear of the back gardens of the lots, should be formed into a roadway, and that the lots were sold subject to and with the benefit of a right of way from the back garden of each house thereover out into Church Road, which bounded the side of Lot 1 farthest from the other lots, and that the respective purchasers should as soon as possible remove the garden fences and form the roadway. This condition was recited in the conveyances to the purchasers of Lots 1, 2 and 3, and Lot 1 was conveyed subject to the right of way in the owners of the other lots, and Lots 2 and 3 were each conveyed with the benefit of the right of way into Church Road, and subject to the right of way in the other owners. In 1873 the purchaser of Lot 1 granted a lease of it to the plaintiff's father for fifty years, which expired on 24th June, 1922, subject to the right of way of the others, and the lessee covenanted to keep the site of the roadway in good repair, and to contribute towards keeping it in repair, and erecting and maintaining gates and posts at the Church Road entrance. On 25th July, 1904, the lease of Lot 1 was assigned to the plaintiff subject to the right of way in the owners of the other lots. In 1911 the plaintiff purchased and had conveyed to him the freehold of Lots 2 and 3, subject to and with the benefit of the right of way. In 1871 all the lots were divided from each other by fences which extended to the ends of the back gardens and over the fifteen feet strip, and a brick wall separated Lot 1, including the end of the fifteen feet strip from Church Road. The evidence showed that from 1871 to 1922 the roadway had never been formed, and none of the fences obliterated to make the road. In 1883 the plaintiff's father, by levelling up part of the site of Lot 1, caused a sheer drop of six feet to occur on the strip between that lot and the adjoining Lot 2, and afterwards erected a wooden fence against the levelled up site of Lot 1, including the portion of the strip, to protect his horses from stepping over into Lot 2. About 1919 the plaintiff, anticipating the expiration of his lease, thought of building a garage on the sites of Lots 2 and 3, facing the strip, to take the place of his garage on Lot 1, and to use the strip as a roadway for the new garage into Church Road, and with that object in view he levelled up the gardens of Lots 2 and 3, and that part of the strip which was situate thereon, so as to overcome the drop and slope the strip up to meet the level of Lot 1, and a few days after his lease expired be pulled down part of the wall which separated the end of the strip from Church Road and erected gates there and drove a motor vehicle from Lot 2 to Church Road. The defendant, who had acquired the freehold of Lot 1, thereupon erected a wall across the strip between Lot 1 and Lot 2, and the plaintiff commenced this action.

P. O. LAWRENCE, J., after stating the facts, said:—Mere non-user is not conclusive evidence of abandonment. This case is distinguishable from *Ward* v. *Ward*, *supra*, on the ground that in that case the way over which the right was claimed was a formed way and never obstructed. On the other hand, in the present case, the roadway was never formed, and during a period of fifty years no attempt was made to form it. During the whole of that time it was obstructed by fences and none of the owners of the dominant tenements had insisted on the removal of the fences, and the road being formed under the scheme of 1871. In short, there has been no way during the whole of that period which was capable of being used and the obstructions had been acquiesced in by the plaintiff and the other owners of the right of way for over fifty years. In these circumstances, I infer an abandonment of the easement by the plaintiff long before he asserted that right in 1922. Further, the conduct both of the plaintiff's father in levelling up part of the site of Lot 1, and thereby causing a drop in the strip, and of the plaintiff in fencing that lot from Lot 2, is inconsistent with the plaintiff's right of way, and adverse to the user of such a right, therefore the action is dismissed.—COUNSEL: *Jenkins*, K.C., and *E. J. Harman*, *Owen Thompson*, K.C., and *R. M. Pattisson*. SOLICITORS: *Stanley Evans & Co.*; *Davey & Pearce*.

[Reported by L. M. MAY, Barrister-at-Law.]

In re **WOOD: HODGE** *v.* **HULL.** Tomlin, J. 21st November.

WILL—CONSTRUCTION—GIFT OF LIFE INTEREST TO A—ON DEATH OF A TO TWO PERSONS IN EQUAL SHARES IF THEN LIVING—IF EITHER OF THEM THEN DEAD TO THE "SURVIVOR, HIS EXECUTORS, ADMINISTRATORS OR ASSIGNS"—BOTH LEGATEES DIED IN THE LIFETIME OF A—MEANING OF SURVIVOR.

Where there was a gift in a will after the death of a life tenant to two persons in equal shares, if then living, and if either of them was then dead to the "survivor, his executors, administrators or assigns," and both persons died in the lifetime of the tenant for life,

Held, that there was sufficient indication in the will in the use of the words "executors, administrators or assigns" to give to the word "survivor" its ordinary meaning, that is to say, in this case, survivor inter se, and not survivor of the period of distribution, and accordingly the executors of that one of the two persons who survived the other took the fund.

White *v.* Baker, 1860, 2 De G.F. & J. 65, *followed*.

Essex *v.* Clement, 1861, 30 Beav. 525, *inapplicable*.

This was a summons by trustees to determine whether upon the true construction of the will and in the events which had happened, the personal representative of R. Wood was entitled to the residuary estate of the testator, or whether such estate was undisposed of by his will, and devolved upon his next-of-kin. The facts were as follows: The testator by his will dated 4th September, 1887, devised and bequeathed all his real and personal estate to his trustees, upon trust to sell and convert, and out of the proceeds thereof to pay his debts, funeral and testamentary expenses, and a legacy thereinbefore bequeathed, and to invest the residue as therein mentioned, and upon trust to pay the annual income thereof to his wife during her widowhood, and upon her death or re-marriage upon trust to divide the trust funds equally between R. Wood and E. H. Wood if they should both be then living, but if either of them should die before his wife should die or re-marry, then he bequeathed the trust funds to "the survivor, his executors, administrators or assigns." E. H. Wood died in the lifetime of the testator. The testator died in 1887, and R. Wood died in the lifetime of the widow, who had just died. It was contended for the legal personal representative of R. Wood that his estate took, even though he did not survive the period of distribution, and *Scurfield* v. *Howes*, 3 Bro. C.C. 90, and *White* v. *Baker*, *supra*, and *In re Pickworth*, 1899, 1 Ch. 642, were referred to. In support of the view that "survivor" referred to the period of distribution *Essex* v. *Clement*, *supra*, and *In re Hunter's Trusts*, 1865, L.R. 1 Eq. 295, were cited.

TOMLIN, J., after stating the facts, said: The question in the present case is whether "survivor" means on death *inter se* of the two beneficiaries, or whether it means on the death of the widow, that is, the period of distribution. The natural import of the word means survivorship *inter se*, and there is nothing in the will which invites or compels me to attach any other meaning to the word. Looking at the judgment of Turner, L.J., in *White* v. *Baker*, *supra*, and Lindley, M.R., in *In re Pickworth*, *supra*, I think I am entitled to attach considerable weight to the words "his executors, administrators or assigns." There is sufficient indication in this will that the natural import of the words shall prevail. There will therefore be a declaration that on the true construction of the will and in the events which have happened on the death of the tenant for life R. Wood, his executors, administrators or assigns became absolutely entitled to the whole estate.—COUNSEL: *Bryan Farrer*; *Errington*; *Formoy*. SOLICITORS: *Robins, Hay, Waters & Hay*, for *Lacey & Son*, Bournemouth; *Bridges, Sawtell & Co.*, for *Robinson & Sheffield*, Beverley.

[Reported by L. M. MAY, Barrister-at-Law.]

High Court—King's Bench Division.

BOWEN *v.* HODGSON. Div. Court. 17th October.

EDUCATION—CHILD SUFFERING FROM INFECTIOUS DISEASE—FITNESS TO RETURN TO SCHOOL—CERTIFICATE OF MEDICAL PRACTITIONER—SCHOOL AUTHORITIES REFUSE RE-ADMISSION—EXAMINATION REQUIRED AT CLINIC BY SCHOOL DERMATOLOGIST—PARENT OBJECTS TO SEND CHILD TO CLINIC—"WITHOUT REASONABLE EXCUSE UNLAWFULLY NEGLECTING TO PROVIDE EFFICIENT ELEMENTARY INSTRUCTION"—EDUCATION ACT, 1921, 11 and 12 Geo. V, c. 51, ss. 42, 43, 44—ELEMENTARY EDUCATION PROVISIONAL CODE, 1922, S. R. & O., 1922, No. 1432, Art. 53.

A child, who had been certified by her parents' doctor as being free from an infectious disease from which she had been suffering, was refused re-admission to a public elementary school on the ground that an opportunity had not been given to the school medical officer to satisfy himself as to her fitness to return. It was asserted that in accordance with instructions given to him by the local education authority, he could not be satisfied until the child had been examined by a dermatologist at the clinic, established for the treatment of children suffering from infectious skin diseases. The child's father objected to sending his child to the clinic for fear of re-infection, but was willing for her to be examined by the dermatologist elsewhere. The magistrates dismissed a complaint against the father for having, without reasonable excuse, neglected to provide efficient elementary instruction for the child.

Held, that in the circumstances, the father had acted with reasonable excuse and that the complaint was rightly dismissed by the magistrates.

Case stated by Willesden magistrates. The respondent was summoned before the magistrates for having habitually and without reasonable excuse unlawfully neglected to provide efficient elementary instruction for his daughter. The girl had been suffering from ringworm, and after she had ceased to be infectious her father's doctor furnished a certificate to that effect. On her return to the school she was refused admission on the ground that she could not be taken back until the school medical officer had had an opportunity of satisfying himself, under the provisions of Art. 53 of the Elementary Education Provisional Code, 1922, S. R. & O., 1922, No. 1432, as to her fitness to return. In order that the school medical officer might be satisfied, the father was required to send the child to a clinic to be examined by a dermatologist appointed to act on behalf of the local education authority. The respondent raised no objection to the examination being made by the dermatologist either at the school or at the respondent's residence, but stated that he had a conscientious objection to the child, who was stated by his own medical attendant to be well, attending at the clinic, where he believed that she might be exposed to the danger of re-infection. Upon the hearing of the complaint the attention of the justices was directed to Art. 53 (*b*) of the Elementary Education Provisional Code, 1922, and the case of *Fox* v. *Burgess*, 66 SOL. J. 335; 1922, 1 K.B. 623. The magistrates by a majority were of opinion: (*a*) That a medical certificate of the child's restoration to health and fitness to attend school signed by a duly qualified medical practitioner having been furnished, she should have been allowed to return to school; (*b*) That Art. 53 (*b*) of the Elementary Education Provisional Code, 1922, did not empower the education authority to compel the father to send his child, whom he had reason to believe to be then well, to a clinic for examination; (*c*) That on all the facts of the case the respondent had reasonable excuse for his failure to provide efficient elementary instruction for his child. They therefore dismissed the complaint, and stated this case. By s. 42 of the Education Act, 1921, it is provided: "It shall be the duty of the parent of every child between the ages of five and fourteen, or, if a bye-law under this Act so provides, between the ages of six and fourteen, to cause that child to receive efficient elementary instruction in reading, writing, and arithmetic." Section 43 provides: (1) "It shall be the duty of the local education authority for elementary education, after due warning to the parent, to complain to a court of summary jurisdiction with a view to obtaining a school attendance order under this Act in the following cases: (*a*) If the parent of any such child habitually and without reasonable excuse neglects to provide efficient elementary instruction for his child . . . . (2) Where the local education authority are informed by any person of any child in their area who is stated by that person to be liable to be ordered by a court under this Act to attend school, or to be sent under this Act to an industrial school, it shall be the duty of the local education authority to take proceedings accordingly, unless the local education authority think that it is inexpedient to take such proceedings . . . ." Section 44 provides that a court of summary jurisdiction may, if satisfied of the truth of the complaint made to them, make a school attendance order. By Art. 53 of the Elementary Education Provisional Code 1922, it is provided: "(*a*) No child may be refused admission to a public elementary school on other than reasonable grounds. (*b*) Where the Board are satisfied (i) that proper arrangements have been made by the local education authority for enabling the school medical officer to ascertain and certify cases in which the exclusion of children from school is desirable, and (ii) that the school medical officer has authorised the exclusion of certain children from the school (1) on the ground that their exclusion is desirable to prevent the spread of disease, or (2) on the ground that their uncleanly or verminous condition is detrimental to the other scholars, or (3) on the ground that, owing to their state of health or their physical or mental defects, they are incapable of receiving proper benefit from the instruction in the school, the exclusion of such children shall be deemed for the purposes of this code to be exclusion on reasonable grounds." [The article then proceeded in smaller type.] "For the purpose of this provision the local education authority may direct that no children who have been excluded under the authority of the school medical officer or under Art. 57 or who have been absent from school owing to sickness shall be re-admitted to school if the school medical officer is not satisfied that they can attend school without risk to themselves or others."

Lord HEWART, C.J., in the course of his judgment, said that the father's own doctor certified that the little girl was quite well and fit to be re-admitted. She was not re-admitted. It was said that she must have a certificate from the school medical officer; the school medical officer required that she should be examined at the clinic. The father said "No, not at the clinic, but she can be examined at my house by the gentleman whom you name." In those circumstances it was said that there was no evidence upon which the justices could refuse to be satisfied that the father had habitually and without reasonable excuse neglected to provide efficient elementary education for his child. It was to be observed that in a prosecution under this part of the Act, the burden was upon the prosecution to show three things at least: first, that there had been neglect on the part of the parent; secondly, that the neglect was habitual; and, thirdly, that the neglect was without reasonable excuse; and it was only if the court was satisfied as to all those three matters that it could make the order. The court in this case was satisfied that on all the facts of the case the respondent had reasonable excuse for what he had done. The question for the court was a question of law, and the only question of law which was raised was whether there was any evidence upon which the justices might properly come to the conclusion to which they came. Speaking for himself, he thought that there was not only some evidence, but that there was abundant evidence, and indeed he thought, that the justices came to the obviously right conclusion. His lordship referred in detail to the provisions of Art. 53 of the Provisional Code above referred to, and said that the code said first of all that a child must not be refused admission except on reasonable grounds. Then it went on to say that a reasonable ground for exclusion might be that the school medical officer had authorised the exclusion of certain children in order to prevent the spread of disease. Then it went on to add, thirdly, that for that purpose the local education authority might direct that no children who had been excluded by the medical officer, or who had been absent from school because of illness, should be re-admitted if the school medical officer was not satisfied that they could attend school. All of that was perfectly intelligible, but what was it that happened in the present case? It appeared by para. 13 of the case as stated that, under an instruction given by the local education authority, the school medical officer was directed not to be satisfied that a child who had been absent from school on account of ringworm, was fit to be re-admitted until the education authority's dermatologist had examined and certified the child as being free from infection. That direction obviously went far beyond what was contemplated in the code. The code said that the education authority might direct that certain children should not be re-admitted if the school medical officer was not satisfied that they could attend school without risk. Here the local education authority had told the medical officer that he was not to be satisfied that the children could attend school without risk unless and until a particular hard and fast condition had been fulfilled. This father did not take up the attitude that he stood upon the certificate of his own medical adviser and would have no further medical examination. On the contrary, when the requirements, lawful or unlawful, of the authority had been brought to his notice he was willing, first, that the child should be examined by the particular dermatologist pointed out to him, and, secondly, that the examination should take place at his own house. The point of departure—the rock on which the splitting took place—was that the local authority said: "It is not enough that the child should be examined by the dermatologist; it is not enough that another certificate should be added to the certificate of the private medical adviser. The examination of

the dermatologist must be made at a particular place, namely at his clinic." In those circumstances the justices have found that this father, who had his views, which might have been well or ill-founded, acted with reasonable excuse and his lordship thought that the justices were right.

SANKEY, J., delivered judgment to the same effect, and SALTER, J., concurred.

The appeal was dismissed.—COUNSEL: *Du Parcq; H. G. Robertson.* SOLICITORS: *E. A. Pratt; Deacon & Co.*

[Reported by J. L. DENISON, Barrister-at-Law.]

CASES OF LAST SITTINGS.

Court of Appeal.

REX v. ELECTRICITY COMMISSIONERS; *ex parte* LONDON ELECTRICITY JOINT COMMITTEE and Others. 27th July.

ELECTRICITY — ELECTRIC LIGHT — COMMISSIONERS — JOINT SCHEME—JOINT ELECTRICITY AUTHORITY—DELEGATION TO COMMITTEES — ULTRA VIRES — PROHIBITION — ELECTRICITY (SUPPLY) ACT, 1919, 9 & 10 Geo. 5, c. 100, s. 7.

The powers of the Electricity Commissioners are to be exercised judicially and not ministerially, and a writ of prohibition will issue if they make an order giving effect to an ultra vires *scheme.*

A scheme which provides that a Joint Electricity Authority shall delegate certain powers to committees for separate portions of the joint electricity district, is ultra vires *the Commissioners.*

Decision of the Divisional Court *reversed.*

Appeal from the Divisional Court. The Divisional Court had discharged a rule *nisi* for prohibition which had been obtained against the Electricity Commissioners set up by the Electricity (Supply) Act, 1919. These Electricity Commissioners were to be empowered by schemes to establish a joint electricity authority for each joint electricity district. It was contemplated that England, Wales and Scotland or parts of them were to be divided into joint electricity districts with a view to improving the organization of the supply of electricity in the districts defined. By s. 6 (2) of the Act of 1919, the Electricity Commissioners had power to formulate or to approve schemes containing provisions enabling the joint electricity authority to delegate to committees of the authority any powers of the authority. The London electricity scheme compelled the joint electricity authority to appoint and keep appointed two committees of the joint electricity authority. It was contended by the applicants that that was not within the powers of the Commissioners. The rule *nisi* having been discharged by the Divisional Court, the applicants appealed to the Court of Appeal.

BANKES, L.J., after quoting s. 7 (1) of the Electricity (Supply) Act, 1919, said:—The scheme to which objection is taken appears at the present stage of its existence as a "draft order under s. 7 of the Electricity (Supply) Act, 1919, constituting the London and Home Counties Electricity District and establishing and incorporating the London and Home Counties Joint Electricity Authority." The objection to this draft order is that the Electricity Commissioners are travelling outside their Parliamentary powers and are acting without jurisdiction in putting forward for adoption this scheme in its present form. The question on this part of the case is whether the objection as to want of jurisdiction is made out. In my opinion it is, and on this short ground. Section 6 (2) of the Act of 1919 enables the Electricity Commissioners to formulate or to approve schemes which contain provisions enabling the joint electricity authority to delegate to committees of the authority any powers of the authority. To get over objections made by the London County Council to having more than one district and more than one electricity authority for London and the Home Counties and the objections of the authorized undertakers within the district to having only one, the Electricity Commissioners have propounded this scheme, which, while in name providing for one electricity authority and one district, in fact provides for two. (After stating the way in which this was proposed to be done, his lordship continued:—) The effect of this provision is to set up within the one joint electricity district which the scheme purports to create two joint electricity authorities, each with its separate district, and its independent powers. This is not, in my opinion authorised by the Act of 1919. A further objection to the validity of the proposed scheme is that the power of delegation which by the statute may be vested by a scheme in a joint electricity authority is by this scheme exercised by the Electricity Commissioners themselves. My view of the construction of the Act of 1919 on this point is that, whereas the Electricity Commissioners have the statutory right of determining whether a power of delegation to committees shall be conferred by a scheme upon a joint electricity authority, the statutory right of exercising that power, if conferred, is vested in the joint authority alone. Without going into other questions, I am of opinion that, on the grounds I have mentioned, the scheme proposed by the Electricity Commissioners is to some extent *ultra vires.* The important part of the appeal has reference to the jurisdiction of the court to make any order either for prohibition or *certiorari.* [With regard to the writ of prohibition, his lordship said that the authorities were conclusive to show that the court will issue the writ to a body exercising judicial functions, though that body cannot be described as being in any ordinary sense a court. His lordship then referred to *dicta in In re Clifford and O'Sullivan,* 1921, 2 A.C. 570, 582, 583; 65 SOL. J., 792; *Reg.* v. *Local Government Board,* 10 Q.B.D., at p. 321, per Brett, L.J.; *Rex* v. *Woodhouse,* 1906, 2 K.B., at p. 535, per Moulton, L.J., and other authorities, and said.] The conclusion that I have come to in reference to the whole matter is that there is abundant precedent for the court's taking action at the present stage of the proceedings of the Electricity Commissioners, provided that it is satisfied that the Commissioners are proceeding judicially in making their report, even though that report needs the confirmation of the Board of Trade and both Houses of Parliament before it becomes effective. In coming to a conclusion on this point it is necessary to deal with this case on its own particular circumstances. The Electricity Act of 1919 imposes on the Electricity Commissioners very wide and very responsible duties and powers in reference to the approval or formulation of schemes. At every stage they are required to hold local inquiries to give interested parties an opportunity of being heard. Their authority extends to the creation of bodies who may exercise all or any of the powers of the authorised undertakers within the electricity district, and to whom the undertakings themselves may be transferred on terms settled by the Commissioners. On principle and on authority, it is, in my opinion, open to this court to hold, and I consider that it should hold, that powers so far-reaching, affecting as they do individuals as well as property, are powers to be exercised judicially, and not ministerially, or merely to use the language of Chief Baron Palles, as proceedings towards legislation. On these grounds I consider that the appeal against the order of the Divisional Court discharging the rule *nisi* for a prohibition must be allowed with costs here and below, and the rule for prohibition in the terms of the rule *nisi* must be made absolute. The appeal against the order refusing to make the rule *nisi* for *certiorari* absolute is dismissed without costs.

ATKIN, L.J., and YOUNGER, L.J., delivered judgments to the same effect. Appeal allowed.—COUNSEL: *Talbot,* K.C., *Tyldesley Jones,* K.C., *Rowand Harker, W. S. Kennedy,* and *A. Tyler; Sir Douglas Hogg,* A.-G., *Macmorran,* K.C., and *Bowstead.* SOLICITORS: *Ashurst, Morris, Crisp & Co.; Sherwood & Co.; Sydney Morse; Slaughter & May; the Treasury Solicitor.*

[Reported by T. W. MORGAN, Barrister-at-Law.]

New Rules.

Supreme Court, England.

PROCEDURE: MATRIMONIAL CAUSES RULES.

PROVISIONAL RULES AND REGULATIONS DATED NOVEMBER 27, 1923, FOR THE PROBATE, DIVORCE AND ADMIRALTY DIVISION OF HIS MAJESTY'S HIGH COURT OF JUSTICE IN DIVORCE AND MATRIMONIAL CAUSES, TO TAKE EFFECT ON AND AFTER 30TH NOVEMBER, 1923, MADE UNDER THE PROVISIONS OF THE MATRIMONIAL CAUSES ACTS, 1857 TO 1907, THE LEGITIMACY DECLARATION ACT, 1858 (21 & 22 VICT., C. 93), AND THE GREEK MARRIAGES ACT, 1884 (47 & 48 VICT., C. 20).

Whereas by the Statute 20 & 21 Vict., c. 85 (Matrimonial Causes Act, 1857), it is provided that there shall be a Court of Record to be called "The Court for Divorce and Matrimonial Causes"; and whereas by Section 53 of the said Act it is further provided that the said Court shall make such Rules and Regulations concerning the practice and procedure under the said Act as it may from time to time consider expedient and shall have full power from time to time to revoke or alter the same; and whereas by the Statute 38 & 39 Vict., c. 77 (*i.e.,* The Supreme Court of Judicature Act, 1875), it is enacted that the President for the time being of the Probate and Divorce Division of the High Court of Justice shall have the powers as to the making of Rules and Regulations conferred by the 53rd Section of the 20th and 21st Vict., c. 85;

Now I, the Right Honourable Sir Henry Edward Duke, President of the Probate, Divorce and Admiralty Division of the High Court of Justice, do, on the grounds of urgency pending the

publication of Rules, make the following Provisional Rules and Regulations concerning the practice and procedure in Divorce and Matrimonial Causes, to take effect forthwith in place of the existing Rules.

Henry Edward Duke,
President.

27th November, 1923.

Petition and Notice to Appear.

1. Proceedings under the Matrimonial Causes Acts or any of them shall be commenced by filing a Petition.

(A) In the body of the Petition shall be stated :—

(1) The place and date of the marriage and the name and status of the wife before the marriage ;

(2) The principal permanent addresses where the parties have cohabited within the jurisdiction ;

(3) Whether there is living issue of the marriage, and, if so, the names, and dates of birth or ages, of such issue ;

(4) The occupation of the husband and the place or places of residence and of domicil of the parties to the marriage at the date of the institution of the suit ;

(5) Whether there have been in the Divorce Division of the High Court any, and if so what, previous proceedings with reference to the marriage by or on behalf of either of the parties to the marriage, and the result of such proceedings ;

(6) The matrimonial offences charged, set out in separate paragraphs ;

(7) The claim for damages, if any.

(B) The Petition shall conclude with a prayer setting out particulars of the relief claimed, including the amount of any claim for damages and any order for custody of children which is sought, and shall be signed by the Petitioner, and in the case of a minor or other person who is not *sui juris* by his or her guardian.

2. The Petition and every copy to be served shall be indorsed in conspicuous characters with a Notice to Appear in the form set out in Appendix I.

3. (A) Every Petition shall be accompanied by an affidavit made by the Petitioner, verifying the facts of which he or she has personal cognizance, and deposing as to belief in the truth of the other facts alleged in the petition, and such affidavit shall be filed with the Petition. A Petition for Restitution of Conjugal Rights shall further state sufficient facts to satisfy one of the Registrars that a written demand for cohabitation and restitution of conjugal rights has been made by the Petitioner upon the party to be served, and that, after a reasonable opportunity for compliance therewith, such cohabitation and restitution of conjugal rights have been withheld.

(B) In cases where the Petitioner is seeking a decree of Nullity of Marriage or of Dissolution of Marriage, or of Judicial Separation, or a decree in a suit of Jactitation of Marriage, the affidavit of the Petitioner, filed with his or her Petition, shall further state that no collusion or connivance exists between the Petitioner and the other party to the marriage or alleged marriage.

Co-respondents.

4. In every Petition for dissolution of marriage on the ground of adultery the alleged adulterers, if male, shall be made Co-respondents in the cause and served with a sealed copy of the Petition, unless a Registrar shall otherwise direct by order on summons supported by affidavits.

5. The term "Respondent" in these rules shall include a Co-respondent so far as the same is applicable.

Service.

6. Every Petitioner who has filed a Petition shall forthwith obtain in the Registry a sealed copy or copies of the Petition indorsed with Notice to Appear for service upon the Respondent or Respondents respectively.

7. A Petition shall be served personally by delivery of such sealed copy as aforesaid. It may not be served by the Petitioner.

8. Service of any document on a party who has not entered an appearance must be personal service unless otherwise ordered.

9. Where personal service cannot be effected leave to substitute some other mode of service may be granted upon an application to the Registrar supported by affidavit or affidavits to include an affidavit of the person having conduct of the proceedings.

10. Any Petition or Decree may be served within or without His Majesty's Dominions.

11. After service has been effected a copy of the Petition as served with a certificate of service indorsed thereon shall be returned into and filed in the Registry. A form of certificate of service is given in Appendix No. II.

12. When it is ordered that Notice to Appear to a Petition shall be advertised the form of advertisement shall be settled in the Registry and the newspapers containing the advertisements shall be filed with the sealed copy of the Petition.

13. A Petitioner cannot proceed to trial unless an appearance has been entered by or on behalf of the Respondents or it has been shown by affidavit filed in the Registry that they have been duly served with the Petition and by certificate issued by and filed in the Registry that they have not appeared.

14. An affidavit of service of a Petition must be substantially in the form given in Appendix No. III and in addition shall show the means of knowledge of the Deponent as to the identity of the person served. A copy of the Petition referred to in the affidavit must be annexed thereto and marked by the person before whom the same is sworn.

Appearance.

15. All appearances are to be entered in the Registry in a book provided for that purpose, and shall be accompanied by an address for service within three miles of the General Post Office. Notice of such Appearance must be given to the opposite party. A form of Entry of Appearance is given in Appendix No. IV.

16. (A) An Appearance may be entered at any time before a proceeding has been taken in default, or afterwards by leave obtained on summons.

(B) The Appearance may be under protest or limited to any proceeding in the cause in respect of which the party shall have received Notice to Appear. Provided that (*a*) any Appearance under Protest shall state concisely the grounds of protest, (*b*) and the party appearing under protest shall forthwith proceed by summons to obtain directions as to the determination of the question or questions arising by reason of such limited appearance and in default of so proceeding shall be deemed to have entered an unconditional appearance. Directions to be given upon an Appearance under Protest may provide for the trial of a preliminary issue with or without stay of proceedings in the cause or for determination of the matters in question at the hearing of the cause.

Interveners.

17. Where a husband is charged with adultery with a named person a sealed copy of the pleading containing such charge shall be delivered to the person with whom adultery is alleged to have been committed, indorsed in lieu of Notice to Appear with notice that such person is entitled within eight days after delivery thereof to apply for leave to intervene in the cause. Such delivery and notice may only be dispensed with by order upon summons for cause shown. A form of notice is contained in Appendix No. V.

18. Application for leave to intervene in any cause shall be made by summons supported by affidavit, and leave may be given with such directions as to appearance and procedure as the Registrar shall think fit.

19. Parties intervening must join in the proceedings at the stage at which they find them unless otherwise ordered by a Registrar.

Staying Proceedings for Restitution.

20. At any time after the commencement of proceedings for Restitution of Conjugal Rights the Respondent may apply by summons for an Order to stay the proceedings by reason that he or she is willing to resume or to return to cohabitation with the Petitioner.

Answer and Subsequent Pleadings.

21. A Respondent who has entered an Appearance may within fourteen days from the expiration of the time allowed for the entry of such Appearance file in the Registry an Answer to the Petition—A form of Answer is given in Appendix No. VI.

22. (A) Every answer which contains matter other than a simple denial of the facts stated in the Petition shall be accompanied by an affidavit made by the Respondent, verifying such other or additional matter so far as he or she has personal cognizance thereof and deposing to his or her belief in the truth of the rest of such other or additional matter, and where the Respondent is husband or wife of the Petitioner shall further state, except where the claim in question is for Restitution of Conjugal Rights, that there is not any collusion or connivance between the parties ; and such affidavit shall be filed with the Answer.

(B) Where the Answer of a husband alleges adultery and prays relief the alleged adulterer must be served personally with a sealed copy thereof bearing a Notice to Appear in like manner as a Petition. Where in such a case no relief is claimed the alleged adulterer shall not be made a Co-respondent but a sealed copy of the Answer shall be delivered to him endorsed with Notice as under Rule 17 that such person is entitled within eight days to apply for leave to intervene in the cause and upon such application he may be allowed to intervene subject to such directions as shall then be given.

23. Within fourteen days from the filing and delivery of the Answer the Petitioner may file a Reply thereto except where such Answer is a simple denial, and no subsequent pleadings shall be delivered except by leave.

24. A copy of every Answer and subsequent pleadings shall within twenty-four hours after the same is filed be delivered to the opposite parties or their solicitors.

25. A pleading may be amended by leave to be obtained upon summons subject to any directions which may then be given as to re-service of the amended pleading and any consequential amendments of pleadings already filed.

26. No pleading shall be amended out of time without leave nor shall any pleading be filed out of time after a step in default has been taken without leave, such leave to be obtained upon summons.

27. Application for further particulars of matters pleaded may be made by summons, but before applying by summons, a party may apply for them by letter. The costs of such letter and of any particulars delivered pursuant thereto shall be allowable on taxation and in dealing with the costs of any application for particulars by summons the provisions of this Rule shall be taken into consideration.

All particulars, whether given under order or otherwise, shall be filed together with a verifying affidavit and within twenty-four hours a copy thereof shall be delivered to the party who has applied for such particulars.

Service of Pleadings, etc.

28. Notices and copies of pleadings and other instruments which are required by these Rules to be delivered but of which personal service is not expressly required may be delivered by leaving the same at the respective addresses furnished by or on behalf of the parties.

Every notice shall be in writing and indorsed by the party or his solicitor.

29. When it is necessary to serve personally any order or decree of the Court an office copy thereof under seal of the Court must be produced to the party served and a copy annexed to the affidavit of service and marked as an exhibit by the commissioner or other person before whom the affidavit is sworn.

Trial or Hearing.

30. (A) Before a cause is set down for trial or hearing the pleadings and proceedings in the cause shall be referred by the Petitioner or any party who is defending the suit to one of the Registrars who shall certify that the same are correct and in order and the Registrar to whom the same are referred shall cause any irregularity in such pleadings or proceedings to be corrected or refer any question arising thereon to the Judge for his direction.

(B) Unless a Registrar shall otherwise order on summons, all causes in which damages are claimed shall be tried by a Common Jury and all other causes shall be heard by the Court itself without a Jury.

31. The Petitioner after obtaining the Registrar's certificate shall set the cause down for trial or hearing and within twenty-four hours file and give to each party in the cause for whom an appearance has been entered notice of his having done so.

If the Petitioner fail so to set down within fourteen days after the granting of such certificate, any party defending the suit may proceed as the Petitioner might have done.

32. No cause shall be placed in the list for trial or hearing until after the expiration of ten days from the date of setting down save with the consent of all parties to the suit or by order of a Judge.

33. The Registrar shall draw and sign the decree of the Court and the same shall be issued under the seal of the Court.

34. After entering an Appearance a Respondent in a cause may without filing an Answer be heard in respect of any question as to costs and a Respondent who is husband or wife of the Petitioner may be heard also as to custody of or access to children.

Discovery.

35. (A) In any cause or matter a party may deliver interrogatories for the examination of an opposite party or parties by leave to be obtained upon summons.

(B) A copy of the interrogatories proposed to be delivered shall be delivered with the summons.

(C) Interrogatories shall be answered within ten days or such other time as may be appointed.

(D) A party may without affidavit apply for discovery of documents by an opposite party or parties and such opposite party or parties may be ordered to make such general or limited discovery as in the discretion of the Judge or Registrar shall seem fit.

Evidence taken by Affidavit.

36. When a Judge has directed that all or any of the facts set forth in a pleading may be proved by affidavit all affidavits sworn in pursuance of such direction shall be filed in the Registry and copies thereof delivered to the other parties to the suit within such time as the Judge or a Registrar shall direct.

37. Application for an order for the attendance of a Deponent for the purpose of being cross-examined in open Court shall be made to a Judge on summons.

Examination of Witnesses before Trial or Hearing.

38. (A) Any necessary application for an order for examination of one of the parties or of a witness who is within the jurisdiction of the Court shall be made to a Registrar by summons.

(B) Such examination shall be *viva voce*, unless otherwise directed, before a person to be nominated by a Registrar.

(C) The other parties in the suit shall have four clear days' notice of the time and place appointed for the examination, unless the Registrar shall otherwise direct.

39. (A) Application for a Commission or for Letters of Request, or for the appointment of a Special Examiner to examine a party or a witness who is outside the jurisdiction of the Court, may be made by summons and the procedure with regard thereto shall conform as nearly as may be to the Rules of the Supreme Court in like cases. (For Form of Commission *see* Appendix VII: for Forms of Letters of Request, Commission Rogatoire, and order for Special Examiner in France *see* Rules of Supreme Court, 1883, Appendix K 35 BB 37 B 37 ccc.)

(B) A Wife may apply to a Registrar for security for her costs of such examination at the hearing of the summons or subsequently by summons.

Trial of Issues.

40. A Judge may direct and any Petitioner and any party to a cause who has entered an appearance may apply on summons to a Judge for a direction for the separate trial of any issue or issues of fact, or any question as to the jurisdiction of the Court.

Proceedings in Chambers.

41. All applications under these Rules which are not hereby directed to be made to a Judge may be made upon summons to a Registrar.

42. A summons may be taken out by a party or at the discretion of a Registrar by any other person having or claiming right to be heard in the cause or matter.

43. The name of the cause or matter and of the agent taking out a summons is to be indorsed thereon and a true copy of the summons is to be served on the party summoned or his solicitor one clear day at least before the summons is returnable and before 6 p.m. and on Saturdays before 1 p.m.

44. On the day and at the hour named in the summons the party taking out the same shall attend with the original summons at the place appointed for hearing the same. If any party to the summons do not appear after the lapse of half an hour from the time named in the summons the other party or parties may proceed in his absence.

45. Appeal from any order or decision of a Registrar may be made to a Judge in Chambers by summons issued within five days of the order or decision complained of and returnable on the first day on which summonses are heard after this period has elapsed, but such appeal shall not act as a stay unless so ordered by the Registrar or a Judge.

Re-Hearing.

46. An application for the re-hearing of a cause heard by a Judge alone where no error of the Court at the hearing is alleged shall be made to a Divisional Court of the Probate, Divorce and Admiralty Division, and shall be by notice of motion, stating the grounds of the application, filed in the Registry and served within six weeks after Judgment, and such notice shall be a 14 days' notice, and may be amended at any time by leave of the Judge. Application for re-hearing in any case not hereinbefore provided for must be made by appeal to the Court of Appeal.

Petition for Reversal of Decree of Judicial Separation.

47. A Petition to the Court for the reversal of a decree of Judicial Separation must set out the grounds on which the Petitioner relies. A form of such Petition is given in Appendix No. VIII.

48. Before such a Petition can be filed an Appearance on behalf of the party praying for a reversal of the decree of Judicial Separation must be entered in the cause in which the decree has been pronounced, leave to enter such Appearance being first obtained upon summons.

49. A certified copy of such Petition, under seal of the Court, shall be served personally upon the party in the cause in whose favour the decree has been made, who may within fourteen days file in the Registry an Answer thereto and shall on the day on which the Answer is filed deliver a copy thereof to the other party in the cause or to his or her solicitor.

50. All subsequent pleadings and proceedings arising from such Petition and Answer shall be filed and carried on in the same manner as before directed in respect of an original Petition and Answer thereto so far as such directions are applicable.

Showing Cause against a Decree Nisi.

51. (A) When the King's Proctor desires to show cause against making absolute a Decree Nisi he shall enter an appearance in the cause in which such Decree Nisi has been pronounced

and shall within fourteen days after entering appearance file his Plea in the Registry setting forth the grounds upon which he desires to show cause as aforesaid and within twenty-four hours of filing his Plea shall deliver a copy thereof to the person in whose favour such decree has been pronounced, or to his Solicitor, and all subsequent pleadings and proceedings in respect of such Plea shall be filed and carried on in the same manner as is hereinbefore directed in respect of an original Petition except as hereinafter provided.

(B) If no Answer to the Plea of the King's Proctor is filed within the time limited or if an Answer is filed and withdrawn or not proceeded with the King's Proctor may apply forthwith by motion to rescind the Decree Nisi and dismiss the Petition.

(C) If the charges contained in the Plea of the King's Proctor are not denied in the Answer thereto the party in whose favour the Decree Nisi has been pronounced shall within fourteen days from the date of the Registrar's certificate that the pleadings are correct and in order set down the cause for trial or hearing and within twenty-four hours afterwards shall file and give to the King's Proctor notice of his having so done.

In default of such setting down and notice the King's Proctor may apply forthwith by Motion to rescind the Decree Nisi and dismiss the Petition.

52. Any person other than the King's Proctor wishing to show cause against making absolute a Decree Nisi shall enter an appearance in the cause in which such Decree Nisi has been pronounced, and within four days thereafter file affidavits setting forth the facts upon which he relies and within twenty-four hours deliver copies thereof to the party or the Solicitor of the party in whose favour the Decree Nisi has been pronounced.

53. The Party in the cause in whose favour the Decree Nisi has been pronounced may within fourteen days after delivery of the affidavits file affidavits in answer, and the person showing cause against the Decree Nisi being made absolute may within fourteen days file affidavits in reply.

54. No affidavits are to be filed in rejoinder to the affidavits in reply without leave of a Registrar.

55. The questions raised on such affidavits shall be argued in such manner and at such time as a Judge may on application upon summons direct.

Decree Absolute.

56. Application to make absolute a Decree Nisi shall be made to the Court by filing in the Registry a notice in writing setting forth that application is made for such Decree Absolute, which will thereupon be pronounced in open Court at a time appointed for that purpose. In support of such application it must be shown by affidavit filed with the said notice that search has been made in the proper books at the Registry up to within six days of the time appointed, and that at such time no person had intervened or obtained leave to intervene in the cause, and that no Appearance has been entered nor any affidavits filed on behalf of any person wishing to show cause against the Decree Nisi being made absolute; and in case leave to intervene had been obtained, or appearance entered or affidavits filed on behalf of such person, it must be shown by affidavit what proceedings, if any, have been taken thereon. A Form of affidavit is given in Appendix No. IX.

If more than twelve calendar months has elapsed since the date of the Decree Nisi an affidavit by the Petitioner giving reasons for the delay must be filed.

Alimony.

57. A wife who is Petitioner in a cause after filing her Petition may file and after serving the same may serve, a Petition for alimony pending suit, and a wife after entering Appearance to a Petition may file and serve a Petition for alimony pending suit.

58. The husband shall within fourteen days after service of a Petition for alimony file his Answer thereto upon oath setting out his property and income and if Respondent shall before so doing enter an Appearance in the cause. Such Appearance may be limited to the alimony proceedings.

59. The wife if the husband's Answer is insufficient may apply on summons for a further and better Answer or for discovery of documents or for an order for the husband's attendance for cross examination, and such order shall thereupon be made as in the circumstances of the case may appear to the Registrar to be required.

60. If the Answer of the husband alleges that the wife has property or income she may within fourteen days file a Reply on oath to that allegation; but the husband may not file a Rejoinder to such Reply without leave of a Registrar.

61. A Registrar shall investigate the averments in the Petition for Alimony, Answer, and Reply, in the presence of the parties or their Solicitors, and shall be at liberty to require the attendance of either party for the purpose of being examined or cross-examined, and to take the oral evidence of witnesses, and to require the production of any document and to call for affidavits, and shall direct such order to issue as he shall think fit or refer the application or any question arising therefrom to the Judge for his decision.

62. A wife who has obtained a decree of Judicial Separation may apply for an allotment of permanent alimony. She may proceed with such application upon the pleadings already filed on her application for alimony pending suit on giving eight days' notice to her husband or his solicitor of her intention so to do. Otherwise the rules governing an application for alimony pending suit shall govern an application for permanent alimony.

63. A wife may at any time after alimony has been allotted to her, whether alimony pending suit or permanent alimony, file her Petition supported by affidavit for an increase of the alimony allotted, by reason of the increased means of the husband or the reduction of her own means or the husband may file a Petition supported by affidavit for a reduction of the alimony allotted, by reason of his reduced means or the wife's increased means, and the course of proceeding in such cases shall be the same as required by these Rules and Regulations in respect of the original Petition for alimony and the allotment thereof.

64. Permanent alimony shall unless otherwise ordered commence from the date of the final decree.

Maintenance and Periodical Payments.

65. (A) Application for maintenance or periodical payments on a decree for dissolution or nullity of marriage shall be made in a separate Petition which may be filed at any time after Decree Nisi but not later than one calendar month after Decree Absolute except by leave to be applied for by summons to a Judge.

(B) Application for periodical payments may be made in like manner at any time after non-compliance with a Decree of Restitution of Conjugal Rights.

66. A certified copy of such Petition under the seal of the Court shall be served on the husband or wife (as the case may be) or his or her solicitor upon the record.

67. A party served with such Petition may within fourteen days after service, after entering an appearance thereto, file an Answer on oath and thereupon on the same day shall deliver a copy of such Answer to the opposite party or his solicitor.

68. If the Answer of the husband alleges that the wife has property of her own, she may within fourteen days file a Reply on oath to that allegation; but the husband may not file a Rejoinder to such Reply without leave of a Registrar.

69. (A) Upon an application for maintenance or periodical payments the pleadings when completed shall be referred to one of the Registrars, who shall investigate the averments therein contained, in the presence of the parties or their solicitors, and who for that purpose shall be at liberty to require any affidavits, the production of any document, and the attendance of the husband or wife for the purpose of being examined or cross examined, and to take the oral evidence of any witnesses, and shall direct such order to issue as to the maintenance of either party to the marriage or the children of the marriage as he shall think fit, or refer the application or any question arising therefrom to the Judge for his decision.

(B) Pending the final determination of an application for maintenance or periodical payments an interim order may be made upon such terms as shall appear to the Registrar to be just and without prejudice to the effect of the order to be ultimately made.

70. The provisions of Rule 63 shall be observed in cases of application for increase or reduction of payments for maintenance and of periodical payments.

Variation of Settlements.

71. (A) Application to vary marriage settlements shall be made by petition filed after but within one calendar month of Decree Absolute unless such time is extended by a Judge on summons personally served on the husband or wife as the case may be, the trustees of the settlements, and such other persons as the Registrar shall direct. Subsequent pleadings shall be as in proceedings for Maintenance. Appearance must be entered in the principal cause before an Answer is filed. The Registrar shall conduct his investigation as in Maintenance proceedings, and shall report in writing to the Court the result of his investigations, The parties respectively upon enquiry by them in the Registry shall be informed of the making of the Report.

(B) The Report of the Registrar shall within five days be filed in the Registry by the party on whose behalf the Petition has been filed, who shall give notice thereof to the other parties heard by the Registrar; and any party, after such notice has been given, may apply to the Judge by motion to confirm or vary the Report.

Settlement of Wife's Property.

72. Application for a settlement of property of a wife by virtue of the Matrimonial Causes Act, 1857, Section 45, shall be made and proceeded with in the manner prescribed in Rule 71 with regard to application for variation of settlements.

Custody and Maintenance of Children and Access.

73. (A) When custody of children is claimed in any Petition the father, mother, or guardian, or any person who has intervened in the suit for the purpose of applying to be appointed

guardian of such children, or who has the custody or control of such children under an order of the Court, may apply at any time either before or after final Decree to a Judge on summons for any order relating to the custody maintenance or education of such children or for directions that proper proceedings be taken for placing such children under the protection of the Chancery Division of the High Court of Justice.

(B) When custody of children is claimed in any Petition and a Petition for alimony *pendente lite*, permanent alimony, periodical payments, maintenance, settlement, or variation of settlement has been filed and is pending in such suit, applications for maintenance for children may be made from time to time to a Registrar.

(C) Applications as to access to children may be made to a Registrar on summons.

Guardians ad litem.

74. (A) A minor who has attained the age of seven years may elect a guardian *ad litem* for the purpose of any proceeding on his or her behalf.

(B) A guardian for an infant under the age of seven years may be assigned by a Registrar upon an application supported by affidavits.

(C) The election, the consent of the guardian to act, and an affidavit showing fitness and no contrary interest, must be filed in the Registry before an elected guardian can be permitted to file a Petition or enter an appearance on behalf of the minor.

75. A Committee or other person duly appointed under the Lunacy Acts for a person of unsound mind may prosecute, defend, or intervene in a suit on behalf of such person or otherwise represent him; but if there be no such Committee or other person duly appointed application shall be made on affidavit to a Registrar, who will assign a guardian to the person of unsound mind. If the opposite party is already before the Court, the application shall be upon summons.

Subpœnas.

76. Subpœnas in causes and matters to which these Rules and Regulations apply shall issue out of the Divorce Registry unless a Judge shall direct otherwise.

Attachment and Committal.

77. Application for attachment or committal shall be made to a Judge by motion.

78. Any person attached or committed may apply for his or her discharge by motion to the Judge, or if the Court be not sitting to a Registrar.

Enforcement of Orders.

79. (A) In default of payment to any person of any sum of money at the time appointed by any order of the Court for the payment thereof, a writ of *fieri facias*, sequestration, or elegit shall be sealed and issued as of course in the Registry upon an affidavit of service of the order and of non-payment.

(B) A decree or order requiring a person to do an act thereby ordered shall state the time within which the act is to be done and the copy to be served upon the person required to obey the same shall be endorsed with a memorandum in the words or to the effect following, viz:—If you the within named (A.B.) neglect to obey this order by the time therein limited you will be liable to process of execution for the purpose of compelling you to obey the same.

Office Copies, Extracts, &c.

80. The Registrars of the Principal Registry are to have the custody subject to direction by the President of the Probate Divorce and Admiralty Division of all pleadings and other documents brought in or filed and of orders and decrees made in any matter or suit.

81. Copies or extracts of documents originals of which are retained in the Registry will, if required, be examined with the originals from which the same are copied. Every copy so required to be examined shall be certified under the hand of a Registrar to be an examined copy, and the seal of the Court will not be affixed to any copy which is not so certified.

Times Fixed by these Rules.

82. (A) The time fixed by these Rules for the performance of any act may be varied by Order of a Judge or Registrar subject to such qualifications and restrictions and on such terms as upon the application for variation may be deemed fit.

(B) The time fixed by these Rules for the performance of any act, or for any proceeding in a cause, shall in all cases be exclusive of Sundays, Christmas Day and Good Friday.

Motions.

83. When it is necessary to give notice of any motion to be made to the Court such notice shall be served on all parties who may be affected by the proposed order and who shall have entered an appearance four clear days previously to the hearing of such motion, and a copy of the notice so served shall be filed in the Registry, and the affidavits to be used in support of the motion and original documents referred to therein or intended to be used at the hearing of the motion shall at the same time be left in the Registry. Copies of such affidavits or documents shall be delivered upon request to the parties who are entitled to be heard upon the motion.

Taxing Bills of Costs.

84. All bills of costs shall be referred to the Registrars for taxation and may be taxed by them without any special order for that purpose. Such bills shall be filed in the Registry. Notice of the time appointed for taxation will be forwarded to the party filing the bill at the address furnished by such party, who shall give the other party or parties to be heard on the taxation thereof at least one clear day's notice of such appointment and shall at the same time or previously deliver to him or them a copy or copies of the bill to be taxed.

(To be continued.)

New Orders, &c.

New Trustee Stock.

NOTICE.

Colonial Stock Act, 1900 (63 and 64 Vict., c. 62). Addition to list of Stocks under Section 2.

Pursuant to Section 2 of the Colonial Stock Act, 1900, the Lords Commissioners of His Majesty's Treasury hereby give notice that the provisions of the Act have been complied with in respect of the undermentioned Stock registered or inscribed in the United Kingdom:—

Government of Nigeria 4 per cent. Inscribed Stock 1963.

The restrictions mentioned in Section 2, Sub-section (2), of the Trustee Act, 1893, apply to the above Stock (see Colonial Stock Act, 1900, Section 2).

NOTICE.

Colonial Stock Act, 1900 (63 and 64 Vict., c. 62). Addition to list of Stocks under Section 2.

Pursuant to Section 2 of the Colonial Stock Act, 1900, the Lords Commissioners of His Majesty's Treasury hereby give notice that the provisions of the Act have been complied with in respect of the undermentioned Stock registered or inscribed in the United Kingdom:—

Union of South Africa 5 per cent. Inscribed Stock 1933-43.

The restrictions mentioned in Section 2, Sub-section (2), of the Trustee Act, 1893, apply to the above Stock (see Colonial Stock Act, 1900, Section 2).

Order in Council.

SAFETY OF LIFE AT SEA.

Whereas on the 20th day of January, 1914, an International Convention for the Safety of Life at Sea, and for purposes incidental thereto, was duly entered into by His Majesty and the other Signatory Powers more especially referred to and set out in the said Convention:

And whereas a Statute 4 & 5 Geo. V, c. 50, intituled "An Act to make such amendments of the law relating to Merchant Shipping as are necessary or expedient to give effect to an International Convention for the Safety of Life at Sea" (being the Convention above referred to) was passed on the 10th day of August, 1914, the short title of which is "The Merchant Shipping (Convention) Act, 1914":

And whereas by Section 29, Sub-section 5, of the said Act it was provided as follows:—

"This Act shall come into operation on the 1st day of July, 1915:

"Provided that His Majesty may, by Order in Council, from time to time postpone the coming into operation of this Act for such period, not exceeding on any occasion of postponement one year, as may be specified in the Order":

And whereas by divers Orders in Council the coming into operation of the said Act has been from time to time postponed, and now stands postponed, by virtue of an Order in Council of the 31st day of May, 1923, until the 1st day of January, 1924:

And whereas His Majesty deems it expedient that the provisions of the said Act should be further postponed:

Now, therefore, His Majesty, by and with the advice of His Privy Council, in pursuance of the powers vested in Him by the above-recited provision and of all other powers Him thereunto enabling, doth order, and it is hereby ordered, that the provisions of the Merchant Shipping (Convention) Act, 1914, shall be postponed from coming into operation until the 1st day of July, 1924.

28th Nov. [*Gazette*, 30th Nov.

County Court Changes.

Pursuant to Section 5 of the County Courts Act, 1903, it is hereby ordered, as follows:—

1. The Schedule to the County Courts Order in Council, 1904 (S.R. & O., 1904, No. 1784) as amended by the Orders set out in the Schedule to this Order shall be further amended as follows:—

In Circuit 18, (a) Circuit No. 18 is removed from the first column of the said Schedule, (b) Nottingham is removed from the second column thereof, and (c) East Retford, Newark and Worksop are removed from the third column thereof.

2. This Order may be cited as the County Courts Extended Jurisdiction (No. 2) Order in Council, 1923, and the Orders set out in the Schedule to this Order and this Order may be cited together as the County Courts Extended Jurisdiction (Amendment) Orders, 1919 to 1923.

3. This Order shall come into operation on the 1st day of January, 1924, and the County Courts Order in Council, 1904, as amended, shall have effect as further amended by this Order.

28th November.

SCHEDULE.

Title of Order.	Reference.
The County Courts (Extended Jurisdiction) Order in Council, 1919 ..	S.R. & O., 1919, No. 2039.
The County Courts (Extended Jurisdiction) Order in Council, 1920 ..	S.R. & O., 1920, No. 823.
The County Courts (Extended Jurisdiction) Order in Council, 1921 ..	S.R. & O., 1921, No. 1800.
The County Courts (Extended Jurisdiction) Order in Council, 1922 ..	S.R. & O., 1922, No. 1351.
The County Courts (Extended Jurisdiction) Order in Council, 1923 ..	S.R. & O., 1923, No. 231. [*Gazette*, 4th Dec.

THE SOUTH STAFFORDSHIRE STIPENDIARY JUSTICE ACT, 1899.

Notice is hereby given that a Petition has been presented to His Majesty in Council by the Urban District Council of Tipton, praying for an Order of His Majesty in Council that the Urban District of Tipton shall cease to be within the limits of the above Act; and His Majesty having referred the said Petition to a Committee of the Lords of the Council, notice is hereby further given that all petitions for or against the Order prayed for should be delivered at the Privy Council Office on or before the 31st day of December next. [*Gazette*, 30th Nov.

War Compensation Court.

The War Compensation Court, together with the Admiralty Transport Arbitration Board and the Irish Deportees (Compensation) Tribunal, will move into new offices at 22, Carlisle-place, S.W.1, on Monday, the 10th inst., after which date all correspondence should be sent to the secretary at that address. The telegraphic address will be "Observable," Sowest, London, and the telephone number will be Victoria 4173.

Societies.

Incorporated Law Society of Liverpool.

The Ninety-sixth Annual General Meeting of the Society was held at the Law Library, 10, Cook Street, Liverpool, on Friday, the 30th November, 1923, the President (Mr. F. H. Edwards) in the chair. The meeting was well attended, there being present, amongst others, Messrs. J. C. Bromfield, J. Cameron, E. V. Crooks, F. Gregory, J. H. Kenion, D. MacIver (Vice-President), C. E. Nield, G. A. Solly, W. C. Thorne, H. Todd, W. A. Weightman, F. J. Weld (Hon. Treasurer), W. Forshaw Wilson, and J. Graham Kenion (Hon. Secretary).

The notice convening the meeting, together with the Annual Report of the Committee and the Hon. Treasurer's accounts, having been taken as read,

The President delivered the following Address:—

GENTLEMEN,

The year during which I have had the honour to serve you as your President has been a quiet one, so far as this Society's work has been concerned, but nevertheless, it has not been without interest. The membership of the Society is most satisfactory. The Society now consists of 423 members, being the highest number recorded since its formation. There are, however, still a certain number of Solicitors practising in the Liverpool district who are not members, and I trust that all our members will use their influence to induce any such to join our Society.

Our Presidents in recent years have, I think, all of them directed your attention to the claims of the Solicitors' Benevolent Association and to the good work done by that Society. We were asked this year to make a special effort to increase our membership and we owe our thanks to Mr. F. C. Gregory, who took the matter in hand on behalf of the Committee, with the result that over 60 per cent. of the solicitors in Liverpool are now members of the Solicitors' Benevolent Association, instead of 42 per cent., as at the commencement of the year. I should like to see the remaining 40 per cent. enrolled.

Mr. T. E. Paget, the senior member of the Society, was elected an honorary member, on the completion of sixty years of membership. I believe that he was much gratified, and I am pleased to say that he was able to acknowledge, in an autograph letter, the compliment paid him by the Society. Mr. Paget was elected President of the Society in November, 1873, and is the first member of the Society to attain the jubilee of his Presidency.

I regret to say that the Society has lost six members by death during the past year. It is very sad that the death of Mr. George Layton should have been followed so closely by that of his son, Mr. R. G. Layton, and that Mr. C. E. Tarbet also should have died so soon after his father, Mr. E. G. Tarbet, who died last year. We will, all of us, I feel sure, also regret the deaths of Mr. J. C. Eccles and Mr. William Rudd. They were both old members of the Society, and although Mr. Eccles had retired from active practice, he retained his membership up to his death. There is one other loss by death which will be felt by all lawyers in Liverpool, that of Lord Sterndale. As William Pickford, he was well-known to all the older members of this Society, and it is gratifying to reflect that a member of our local Bar attained the high office of Master of the Rolls. His close association with this city and the fact that he retained such a warm interest in it up to the last, will always keep his memory before us.

Amongst our new members we are glad to welcome Mr. Walter Moon, the Town Clerk. His assistance has been invited on the Committee, and on more than one occasion since his appointment he has given the Committee the benefit of his knowledge on special subjects.

The accounts of the Society are most satisfactory, and you will see from the report and balance sheet that it is now in as strong a position financially as it was prior to the war and that we have, therefore, been able to reduce certain classes of subscriptions. We have come to an arrangement with the Board of Inland Revenue under which subscriptions to our Society will be allowed as an office expense, and the Society will pay tax on the surplus of their receipts over expenditure. We hope that the arrangement which we have made will meet with the general approval of our members.

One of the matters of the greatest interest to us during the course of the year has been the question of legal education under the provisions of the Solicitors Act, 1922. As you are aware, it is now obligatory on any clerk articled on or after the 1st of January, 1923 (unless specifically exempted), to attend, at an approved law school, a certain number of lectures during a period of at least one year in the course of his articles. The funds necessary for the establishment of new, and the carrying on of existing law schools, has been provided by increasing the annual fee on a solicitor's practising certificate from 5s. to £1. The matter is one which I have had to consider not so much as a member of your Committee, but as one of your representatives on the Board of Legal Studies. The problem as to the best application of time is not an easy one. The fact that the clerk is articled primarily in order that he may be taught the business of a solicitor must never be lost sight of. Too much attention is, I think, sometimes paid to the importance of lectures and, moreover, the natural tendency of an educational authority is to favour lectures on academic rather than on practical subjects. I think, however, that the arrangement which we have made in Liverpool with regard to the lectures to be attended by articled clerks will be found to be satisfactory, and will not take an articled clerk too much away from his office work. Before passing from this subject, I wish to refer to the difficulty which necessarily arises when an articled clerk desires to take a law degree in the course of his articles. It is practicable for this to be done, but unless an articled clerk is prepared to devote the greater part of his evenings to study it can, I fear, only be done at the expense of practical office work, and I venture to think that where an articled clerk desires to take a law or any other university degree it is far better that he should, if possible, take it before he commences his articles.

There is a matter to which I desire to refer, viz.: the privileges of the Crown, both in contract and in tort. This seems to me to be a question of increasing importance. I suppose that so long as the country was governed by a personal monarchy there was much to be said for the privilege of the Crown. The King had to collect the taxes and provide the Army and Navy, but it was not his practice to interfere to any extent with the business of his subjects. However, the position is now different, and has become increasingly so during and subsequent to the war. We

find now the Government concerning themselves in almost every phase of business, and when called upon to meet what with the subject 'would be ordinary business obligations, pleading the privileges of the Crown or asserting its privileges with regard to ordinary business risks. I will give you a few illustrations. The Government chartered ships compulsorily during the war and took the war risks. If the shipowner had covered his war risk with marine underwriters his claims would have been adjusted in accordance with ordinary mercantile usage and paid without delay. We find, however, in the case of the Crown, a decision of the court that the war risks' obligation under a war charter-party is not technically a marine policy and that the ordinary Admiralty rule under which interest is treated as part of the damages does not apply and that the Crown is not liable to pay interest on debts due by the Crown. Is it right that a subject who owes money to the Crown should be compelled to pay interest, whereas the Crown can delay payment for an admitted debt to a subject for perhaps as much as two or three years and pay no interest? Then, again, there is the question of set-off—why, if I owe Department A of the Government (say) £1,000 and I am owed £1,000 by Department B, should the one debt not be set off against the other? As it is, I have to pay Department A £1,000 with interest and receive from Department B £1,000 without interest. Then, again, there is the position of the Government with regard to their simple contract debts. Why, if the Government enter into trade and make a bad debt, should they be in a better position than any other trader, and claim the rights of preferential creditor? This illustration is, I think, still *sub judice*, and I do not think any final decision has yet been given. There is only one more illustration to which I will refer and that is the case of the Postmaster-General against the Liverpool Corporation. That case was taken by the Crown from the Liverpool County Court up to the House of Lords. The claim was for damages to telephone cable. There was no negligence on the part of the Liverpool Corporation, but the negligence which gave rise to the damage was that of the predecessors of the Postmaster-General. The case, I am glad to say, was decided against the Postmaster-General, but a threat was made that a Bill would be introduced to meet similar cases in the future. This led Lord Birkenhead to remark on the probable contents of the Bill. He said that the first clause would be that the Postmaster-General can do no wrong and that the second clause would be that if he did do any wrong somebody else must pay for it.

Then we have the antiquated and cumbersome procedure against the Crown by petition of right for which the fiat of the Attorney-General must be obtained. A process which seems to take several months. I cannot help thinking that the privileges of the Crown are completely out of date with modern conditions and require to be curtailed in many directions. I think also that it ought to be possible, with certain necessary safeguards to proceed against the Crown by means of an ordinary writ. It has, I believe, been suggested that a department might be set up which would act as a kind of clearing-house, and which would accept service of process on behalf of all Government departments. You will remember the recent contention of the Board of Trade, that it could not be served with process as a public body, and that all the members must be served individually, commencing with the Archbishop of Canterbury. Although the Board of Trade was successful in its argument before the Court of Appeal, it has had to yield to the pressure of public opinion on this point.

The whole question of the Crown as litigant was the subject of an interesting paper read by Mr. Paxton, at the Provincial Meeting of the Law Society, held in Liverpool, in October, 1920, and, subsequently, a Select Committee of Enquiry was appointed before whom Sir Charles Morton, on behalf of the Law Society, and Mr. Paxton, on behalf of this Society, gave valuable evidence, in March of last year. Whilst the Report of the committee was never publicly issued, I believe that the Lord Chancellor intends, when the time is opportune, to introduce a Bill which I sincerely trust will considerably modify the special rights which the Crown enjoys as litigant.

There is another matter to which I wish to call attention, and that is the Carriage of Goods by Sea Bill, which, I fear, through the General Election, will be delayed before becoming law. In passing, it is of interest to note that with one exception all the recommendations which were made by your Committe with regard to the drafting of the Bill have been accepted by the Joint Committee of the two Houses to which the Bill was referred. It is, however, the principle of the Bill with regard to which I wish to say a few words. The schedule to the Bill has been the subject of long negotiations at the Hague between traders, shipowners and underwriters, and it contains provisions as to the Carriage of Goods by Sea which it is hoped will become standardised amongst maritime nations. The primary object of the Bill is to improve the value of the Bill of Lading as a negotiable security. It is thought that if the rights of a shipowner to impose conditions with regard to the carriage of goods are restricted, the position of the holder of the Bill of Lading, whether financier or trader, will be substantially improved. The maritime trade of this country has, however, been built upon freedom of contract and many of our pioneer industries have been assisted by this freedom. How far the proposed restrictions will really benefit the trader seems to me to be an open question, but we have had many examples in the legislation of recent years in which the imposition of restrictions on freedom of contract has certainly not proved itself to be a benefit.

Dealing shortly with the other points arising upon the report, the suggested alterations with regard to solicitors' remuneration has not made quite the progress that one could have hoped. The present position is fully dealt with in the Report.

In accordance with its usual practice, your Committee has considered every Bill which appears to be in any way of interest to the profession. These are all touched on in the Report, and I will only refer to the Criminal Justice Bill and the Rating and Valuation Bill. The Criminal Justice Bill is designed to promote a speedier administration of criminal justice and to remedy a number of anomalies in connection with the administration of criminal law. There were several points which the Committee criticised. I will only refer to the special powers reserved to the Crown in certain matters enabling the Crown officials to dictate to the court whether a case shall be disposed of summarily or not, and to the fact that a certificate from the Attorney-General will still be necessary for an appeal from the Court of Criminal Appeal to the House of Lords. Both of these functions, one would think, would be more properly exercised by the court itself and not by the prosecuting authority, but it is the old story of Crown privileges again. The Rating and Valuation Bill is in a crude form and has not been presented to Parliament, but criticisms have been invited upon it. The general idea of the Bill, apart from certain questions which chiefly affect railway companies, is that there should be only one rating authority, both for rating and income tax purposes. I venture to think that the Bill is one which will commend itself to most of us, but it is obvious that it will meet with a good deal of criticism from the parties whose work it will affect and I expect it will be a long time before it becomes law.

I am glad to be able to report that the Liverpool Law Clerks' Society, which suspended its activities some two years ago, when the National Federation of Law Clerks was established, has now resumed its functions as a social, benevolent and educational society. It is a great satisfaction to us to be able to welcome the old society again and to know that there is nothing now which is likely to disturb the friendly relations which have always existed between the Liverpool Law Society and the Liverpool Law Clerks' Society, and between Liverpool solicitors and their staffs.

In conclusion, before moving the adoption of the Report, I wish to thank the officers and members of the Committee, and particularly the Honorary Secretary, Mr. John Graham Kenion, and his assistant, Mr. Richards, for the great help which they have given me during my year of office. I remember some twenty-five or more years ago, it was no light task on a solicitor's time to be your President, but life is made easy for the President of to-day and to have been your President is both a pleasure and an honour for which I thank you all most heartily.

It was moved by the President, seconded by the Vice-President, and resolved—

"That the Report of the Committee, subject to any verbal alterations or modifications which the officers may find necessary, together with the Hon. Treasurer's accounts, be approved and adopted and that the same be printed and circulated."

It was moved by Mr. J. H. Kenion, seconded by Mr. P. K. Stone, and resolved—

"That the thanks of the meeting be given to the President for his address, and that the same be printed and circulated as part of the Report."

It was moved by Mr. F. Gregory, seconded by Mr. W. S. Holden, and resolved—

"That the thanks of the Society be given to the officers and members of the Committee for their services during the past year."

There being ten nominations for the nine vacancies on the Committee, a ballot was taken, and the following gentlemen were elected for the ensuing term of three years: Messrs. G. H. Brabner, W. H. T. Brown, E. Buckley, H. D. Darbishire, M. A. M. Dillon, F. C. Gregory, L. S. Holmes, H. Todd, and F. J. Weld.

The following are extracts from the Report of the Committee.

The Committee present the Ninety-sixth Report of the proceedings of the Society.

Committee.—The Committee invited the general assistance throughout the year of Mr. J. C. Bromfield, District Registrar of the High Court, Mr. Walter Moon, Town Clerk of Liverpool, Mr. C. E. Nield, County Court Registrar, Mr. W. C. Thorne, Solicitor to the Mersey Docks and Harbour Board, and Mr. R. D. Cripps, Clerk of the Peace.

The retiring members of the Committee are Messrs. W. H. T. Brown, A. E. Chevalier, H. D. Darbishire, E. Lloyd, W. J. Shield, G. A. Solly, R. Stewart-Brown, H. Todd, and F. J. Weld, of whom the Committee nominate Messrs. W. H. T. Brown, H. D. Darbishire, H. Todd, and F. J. Weld, as eligible for re-election at the Annual General Meeting under art. 49.

Members.—The Society now consists of 423 members, being the highest number recorded since its formation. The number of barristers, students and others, not being members, who subscribe to the Library is sixty-five.

During the past year twenty-one new members have been elected.

During the same period thirteen members ceased, through death or otherwise, to belong to the Society.

Mr. T. E. Paget, the senior member of the Society, on his completion of sixty years' membership, was elected an honorary member of the Society. Mr. Paget was elected President of the Society in November, 1873, and is the first member to attain the Jubilee of his election as President. The late Mr. William Radcliffe (President in 1861) also attained his Jubilee in the year 1911, but was not then a member of the Society. The cordial congratulations and best wishes of the Committee were tendered to Mr. Paget by the President.

Obituary.—The Committee regret to record the deaths of the following members of the Society during the past year:—Mr. J. C. Eccles (Southport), Mr. F. Gittins, Mr. A. E. Horrocks, Mr. G. Layton, Mr. R. G. Layton, Mr. Wm. Rudd, and Mr. C. E. Tarbet. Mr. Geo. Layton was elected a member in 1870, and served on the Committee for nine years. Mr. R. G. Layton and Mr. Rudd also served on the Committee for three years.

Finance.—The Hon. Treasurer's statement of accounts and balance sheet are annexed to this Report, and show a credit balance on the year's working of £285 9s. 9d., and cash at bank of £501 10s. 10d. It is satisfactory to record that the Society is now as strong financially as it was prior to the war, a saving having been effected on nearly all items of expenditure. The Committee have invested from the accumulated balance a further sum of £300, which will complete the replacement of investments realised during the war to meet ordinary expenditure. Under the provisions of art. 21A, it has been decided to reduce by half a guinea as from the 1st October, 1923, the subscriptions which were increased in December, 1919. The Committee again desire to draw the attention of members to the fact that the Society's Lecture Room is available for meetings, arbitrations, property auctions, &c., on reasonable terms, preference being given to members of the Society. The amount received from these lettings is not so satisfactory as last year, and the Committee trust that the facilities afforded will be utilised more frequently in the future.

Income Tax.—Subscriptions to Society.—The attention of the Committee having been drawn to the fact that an Inspector of Taxes had disallowed members' subscriptions as an office expense, and that such practice might become general in the future, it was decided, after full consideration, to enter into an arrangement with the Board of Inland Revenue whereby (*inter alia*) all subscriptions payable to the Socidty for the current and future years may be deducted as an office expense when computing liability for income tax. The arrangement has now been completed.

Points of Law and Practice in Conveyancing.—Messrs. E. L. Billson, W. H. T. Brown, and Francis Weld have been the referees to decide differences between members regarding the law and practice of conveyancing, and have dealt with two cases during the year. Cases for the decision of the referees should be sent in duplicate, addressed to the Hon. Secretary, one copy signed by the parties in difference. If in any case it should be so desired, the solicitors may appear before the referees and argue the point at issue.

Legal Education.—The President, the Vice-President, and Messrs. H. D. Darbishire and H. Todd represented the Society on the Board of Legal Studies during the year, and in addition Mr. W. H. T. Brown was co-opted a member of the Board; on the Faculty of Law the Society was represented by the President and Mr. H. D. Bateson.

Local Prizes.—The "John Atkinson" and "Rupert Bremner" Gold Medals for 1922 were awarded to Mr. D. P. Oliver (articled to Mr. A. A. Rees) who was placed in the third-class at the Honours Examination held in June, 1923. The "Timpron Martin" Gold Medal was not awarded, the examiners reporting that no candidate qualified.

No candidate having obtained first-class honours, the "Enoch Harvey" Prize for 1922 was not awarded.

Town Clerk of Liverpool.—On the resignation of Mr. Etherton, Mr. Walter Moon was appointed town clerk. At the invitation of the President he attended a meeting of the committee when the President, on behalf of the Society, welcomed him as a member.

Advocacy.—In response to an enquiry by a member, as to whether a client could have two or more solicitors sharing the conduct of a case in the Police or County Courts in the same way that he could have two or more counsel in the Supreme Court, the committee expressed the opinion that no objection could be taken to such a course.

Solicitors and Auctioneers as Stakeholders.—The practice existing in certain parts of the country of paying the deposit money on sales by auction either to the solicitor or auctioneer as stakeholder instead of as agent for the vendor, was considered, and the matter was brought before the Associated Provincial Law Societies with a view to establishing some uniformity of practice throughout the country. Considerable diversity of opinion existed amongst the societies as to the necessity for such alteration, and it was pointed out that in many cases any change would involve an alteration in the local Conditions of Sale. The matter was therefore not proceeded with.

Solicitors' Remuneration.—At the instigation of the Committee, the advisability of applying for a variation and amendment of the orders and scales of remuneration made under the Solicitors' Remuneration Act, 1881, was considered by The Law Society, and the views of the Provincial Law Societies were requested thereon. Your committee accordingly prepared a memorandum of alterations and amendments to the existing *ad valorem* scales which they considered advisable, based upon the recommendations previously made in their report of the year 1917. The Committee also recommended the extension of *ad valorem* scale charges to matters which are not at present included in any such scale, and the following recommendations were embodied in a circular letter to the other Provincial Societies:—

NEGOTIATING FEE.

(A) Sales and Purchases:—
1½ per cent. up to £5,000.
1 per cent. thereafter, without limit of amount.

(B) Mortgages:—
Mortgagee's Solicitor 1 per cent. throughout
Mortgagor's Solicitor ½ per cent. throughout.
} without limit of amount.

DEDUCING AND INVESTIGATING.
1½ per cent. up to £1,000.
1 per cent. above £1,000 and up to £10,000.
½ per cent. above £10,000, without limit of amount.

The following matters to be remunerated by appropriate *ad valorem* scales:—

(1) Any conveyance of transfer of land, exchange, partition, or surrender relating to land not included in Part 1 of Schedule 1, to the existing Order.

(The exclusion of many of these transactions from the existing scale depends upon merely technical considerations.—See Law Society's Digest of Opinions.)

(2) Settlements including all ancillary documents connected therewith completed at the same time.

(3) Mortgages or Deeds of Further Charges not included in Part 1 of Schedule 1 of the existing Order exclusive of mortgages of ships.

(4) Probate and Administration of estates of deceased persons:—

(A) Obtaining probate or letters of administration and professional work up to and including payment of duties, distribution or retainer in trust, but not including sale of real estate or litigation.

(*b*) Distribution of capital of trust estates where not included in (*a*), and including preparation and completion of estate duty accounts and assessment and payment of duties.

(Note.—These scales might be further sub-divided following the Scotch practice.)

5. Companies—The formation of companies—Distinction being drawn as regards remuneration between public and private companies.

6. Debenture trust deeds and debentures.

The item charges in Sched. 2 to the existing order should be substantially increased, merging the present temporary increase of 33⅓ per cent.

It is appreciated that the new *ad valorem* scale charges would require to be accompanied by rules, and it is thought that these should include as at present:—

(1) A fixed minimum charge, and

(2) Provision for increased remuneration in "extraordinary cases."

At a joint Conference with the Manchester Society the above recommendations were considered and discussed, and the Manchester representatives agreed to support them, whilst certain additional proposals with regard to the costs of leases put forward by the Manchester Society were approved and supported by this Society. Subsequently, the Joint Committee (composed of representatives of the Provincial Societies and The Law Society) met and considered the replies received from the various Societies and issued a report intimating that there was a general concensus of opinion in favour of an application being

made for increasing the negotiating, deducing and investigating scales and also the scales as to leases; but, in view of the general lack of support to the inclusion in the *ad valorem* scales of matters at present remunerated under Sched. 2, the Joint Committee were unable to adopt such recommendations. The report of the Joint Committee was submitted to the Council of The Law Society who referred the matter to the Associated Provincial Law Societies. The latter met and considered the report and made various additional suggestions for further consideration by the Joint Committee.

(To be continued.)

Insanity and Crime.

Report of Lord Justice Atkin's Committee.

(Continued from p. 172.)

[The report makes some observations on the existing practice and procedure in criminal trials where the defence of insanity is raised, and then takes up the second part of the reference—"whether any and if so what changes should be made in the existing law and practice in respect of cases falling within the provisions of Section 2 (4) of the Criminal Lunatics Act, 1884." After examining this section and the earlier statutory provisions of 1840 and 1864, it proceeds :—]

There is authority of some weight from the time of Lord Coke for considering that apart from statutory provisions it was contrary to common law to execute an insane criminal.

I. Sir Edward Coke, in his "Institutes," in discussing an Act passed in the reign of Henry VIII (Cap. 1, p. 6), says :—

"it was further provided by the said Act of 33 H. 8 that if a man attainted of treason became mad, that notwithstanding he should be executed; which cruell and inhuman law lived not long, but was repealed, for in that point also it was against the common law, because by intendment of law the execution of the offender is, for example, *ut poena ad paucos, metus ad omnes perveniat*, as before is said; but so it is not when a mad man is executed, but should be a miserable spectacle, both against law, and of extreme inhumanity and cruelty, and can be no example to others."

II. Sir Matthew Hale in his "Pleas of the Crown," says :—

"If a man in his sound memory commits a capital offence . . . and after judgment becomes of non-sane memory, his execution shall be spared, for were he of sound memory he might allege somewhat in stay of judgment or execution."

III. Serjeant Hawkins in his "Pleas of the Crown" (Cap. 1, Section 3, page 2), says :—

"And it seems agreed at this day that if one who has committed a capital offence becomes *non-compos* before conviction, he shall not be arraigned, and if after conviction that he shall not be executed."

IV. Blackstone, in his "Commentaries" (Vol. 4, p. 465), says :—

"Another case of regular reprieve is if the offender becomes *non-compos* between the judgment and award of execution, for regularly, as was formerly observed, though a man be *compos* when he commits a capital crime, yet if he becomes *non-compos* after judgment he shall not be ordered for execution."

V. Sir John Hawles, the Solicitor-General, in the reign of William III, in one of the State Trials, said :—

"Nothing is more certain than that a person who falls mad after a crime committed shall not be tried for it, and if he falls mad after judgment he shall not be executed."

He adds :—

"That it would be inconsistent with humanity and inconsistent with religion to make examples of such persons, as being against Christian charity to send a great offender 'quick' as it is styled, into another world when he is not of a capacity to fit himself for it."

VI. Stephen, in his Commentaries, quotes and adopts the above dicta of Coke, Hale, and Blackstone as expressing the common law that a person who becomes or is found to be insane after the judgment of death shall not be executed.

Probably these authorities have influenced the practice of successive Home Secretaries, but since the Act of 1840 we have indisputable authority for saying that no prisoner under sentence of death has ever been executed as to whom a certificate of insanity has been given under the statute for the time being in force.

The first question that arises is, Should the power of the Home Secretary to remit to asylums prisoners reasonably certified to be insane exist? We have no doubt at all that it should. In the case of prisoners not under sentence of death the necessity of such a power has never been controverted. In the vast majority of cases the sanity of the prisoner has never been in issue. After conviction insanity may develop in its most extreme form; and we cannot imagine a civilised community in which it could be considered necessary or desirable to keep such a person confined among ordinary prisoners subject to the common discipline prescribed for prisoners of normal mind, and deprived of any treatment for the alleviation of his mental disorder. There can be no real distinction in cases of prisoners under sentence of death. We have already pointed out the difficulty of obtaining satisfactory evidence in many of such cases. In some, indeed, the issue of insanity is never raised at the trial. Of the thirteen cases since 1900 in which prisoners under sentence of death have been removed to Broadmoor under the power in question, in four the question of insanity was not before the jury. In one of these the accused pleaded guilty; in another he only set up an *alibi*; in two others no evidence of any kind was called for the defence. But the power should exist even where the issue is raised before the jury.

The question for the Home Secretary is not simply the legal question "Was the prisoner responsible for his act?" though it may be his duty to review that finding; under the statute the question is a medical question, "What is the prisoner's present state of mind?" In investigating that question the medical men must necessarily consider the circumstances of the crime for which the prisoner has been convicted.

It is proper that the official instructions given to the medical men appointed under Section 2 (4) should direct them, as it does, to investigate his mental condition both now and as far as possible at the time of the murder. In practice therefore the report after a statutory inquiry, wherever it is possible, deals with both periods of time. But we wish to emphasize that the statutory inquiry is intended to investigate the prisoner's sanity or insanity, *i.e.*, his condition from a medical point of view; and it is our opinion that this inquiry should still be held under the sub-section and we have no change in the procedure to recommend. No doubt in some cases the investigation and the exercise of the discretion involve a review and a reversal of the express finding of the jury. So far from this being objectionable we think it essential that it should form part of the duty of the Home Secretary; just as it is in exercising the prerogative of mercy, to which this power is closely akin.

We may quote from the report of the Criminal Code Bill Commissioners of 1878-9 :—

"It must be borne in mind that although insanity is a defence which is applicable to any criminal charge, it is most frequently put forward in trials for murder, and for this offence the law—and we think wisely—awards upon conviction a fixed punishment, which the judge has no power to mitigate. In the case of any other offence, if it should appear that the offender was afflicted with some unsoundness of mind, but not to such a degree as to render him irresponsible—in other words, where the criminal element predominates, though mixed in a greater or lesser degree with the insane element—the judge can apportion the punishment to the degree of criminality, making allowance for the weakened or disordered intellect. But in a case of murder, this can only be done by an appeal to the executive; and we are of opinion that this difficulty cannot be successfully avoided by any definition of insanity which would be both safe and practicable and that many cases must occur which cannot be satisfactorily dealt with otherwise than by such an appeal."

It seems to us that the power in question is a necessary completion to the legal principle of responsibility; and that while the latter should be strictly maintained the executive should have the reasonable means afforded by the statute of alleviating any hardship that may be caused by the single punishment for murder. Both Medical Associations approve of the continuance of the powers under the sub-section. They are relied on by those who administer the law; and we are informed that of the fifty-eight inquiries held since 1900, thirty-six have been held at the suggestion of the trial judge or the Court of Criminal Appeal that further inquiry was desirable. Of the whole fifty-eight, in thirteen cases the prisoner was certified insane and removed to Broadmoor; seventeen cases the prisoners' sentence was commuted; twenty-eight cases the prisoner was executed.

The total number of convictions for murder during that period was 585. There was a statutory inquiry in 10 per cent. of the convictions, and a certificate of insanity in 2.2 per cent. of the convictions.

The corresponding figures for the whole period since the passing of the Act of 1884 show a percentage of 11 and 3.1. The power therefore under the section does not result in any substantial variation of the trial results.

We have only to add that in our opinion it is right that the power of acting upon the certificate of insanity conferred upon the Home Secretary should be in terms discretionary. Facts may become known after the inquiry or the inquiry itself may for various reasons be found to be unsatisfactory so as to entitle the Home Secretary to allow the law to take its course notwithstanding the certificate.

But if no such circumstances exist we think that the present practice of exercising the discretion in only one way, *i.e.*,

committing the prisoner to an asylum, is right and should be continued. We should be not less humane than our forefathers. It may be that the degree of insanity contemplated by the exponents of the common law whom we have quoted was greater than that which would be covered in these days by a certificate of insanity under the sub-section. But many of the reasons given for the merciful view of the common law continue to have force even under modern conditions. Every one would revolt from dragging a gibbering maniac to the gallows. We are not prepared to draw a line short of the certificate of insanity given after inquiry by reasonable and experienced medical men.

On this matter and on this matter only the majority of us have the misfortune to differ from our colleague, Sir Herbert Stephen, who thinks that the certificate of insanity should not necessarily determine the exercise of the discretion, but that the Home Secretary might properly in some cases leave for execution a prisoner rightly certified to be insane.

[There follow some general observations and the report concludes as follows :—]

Summary.

It will be convenient to give a summary of our recommendations. We recommend that :—

1. It should be recognized that a person charged criminally with an offence is irresponsible for his act when the act is committed under an impulse which the prisoner was by mental disease in substance deprived of any power to resist. It may require legislation to bring this rule into effect.

2. Save as above, the rules in *McNaghten's Case* should be maintained.

3. Where a person is found to be irresponsible on the ground of insanity, the verdict should be that the accused did the act (or made the omission) charged, but is " not guilty on the ground that he was insane so as not to be responsible, according to law, at the time." The existing statutory provision in this respect should be amended.

4. Until such amendment, the verdict should always be taken and entered as guilty of the act charged, but insane so as not to be responsible, according to law, for his actions at the time.

5. Accused persons should not be found on arraignment unfit to plead except on the evidence of at least two doctors, save in very clear cases.

6. The present law as to appeal should not be altered, *i.e.*, there should be no appeal on the finding of insanity either on arraignment or after trial and, in the latter case, either as to the act or omission, charged or as to insanity.

7. Provision should be made, under departmental regulations, for examination of an accused person by an expert medical adviser at the request of the prosecution, the defence, or the committing magistrate.

8. Provision for a panel or panels of mental experts is unnecessary.

As to the Criminal Lunatics Act, 1884.

9. It is essential that the statutory power under s. 2 (4) should be maintained.

10. The procedure under the sub-section is satisfactory and does not require amendment.

11. The discretion of the Secretary of State should be exercised as at present.

We desire gratefully to acknowledge the valuable services of our honorary secretary, Mr. R. E. Ross, the Principal Clerk of the Court of Criminal Appeal. He has worked for the Committee gratuitously, and has spared no effort to make our labours easier. His profound knowledge of criminal law and procedure and his administrative experience have been of the rgeatest assistance.

(Signed) J. R. ATKIN.
ERNEST M. POLLOCK.
TH. H. INSKIP.
EDWARD MARSHALL-HALL.
HERBERT STEPHEN.
RICHD. D. MUIR.
A. H. BODKIN.
EDWARD TROUP.
ERNLEY BLACKWELL.

Dated the 1st day of November, 1923.

From *The Times* of 4th December, 1823 :—A curious instance of the vehemence of the French advocates is recorded in the paper containing the report of the late trial. The Counsel for the widow Boursier, in the course of the first quarter of an hour, worked himself into such a heat that he was forced to stop ; and the proceedings were suspended while he went out to take a walk on the terrace of the Court-house, accompanied, says the paper, by his wife and daughter.

South Africa and the Colour Bar.

A Reuter's message from Pretoria, of the 13th ult., says :—

An important decision, declaring the colour bar in the Transvaal to be repugnant to the general law of the land, has just been delivered by the Supreme Court, in a considered judgment by Mr. Justice Krause, in which Mr. Justice Tindall and Mr. Justice Morice concurred.

The matter arose on an application by the Attorney-General for a ruling on a question of law in a case in which a mine manager was acquitted by a magistrate of contravention of the Mines Works Machinery Regulations by permitting a native to be in charge of a locomotive, on the ground that the regulation was *ultra vires*, mainly on account of its unreasonableness and because it did not apply to all classes alike.

Mr. Justice Krause said that the real point was whether the regulation was not *ultra vires*, in that it discriminated between white and coloured persons at all.

Whenever the Legislature had seen fit to place restrictions upon the rights of coloured persons it had done so in express and clear words, and in the absence of such clear expression of this intention a very strong case would have to be made out before the Court would be justified in inferring that such power of discrimination had been granted by implication to the Governor-General. There could be no justification, said his lordship, for differentiation and it would be dangerous to hold, in the absence of express statutory provision, that the Governor-General had power, under cover of the general words of the section, to make such a regulation.

Sentences of Preventive Detention.

In the Court of Criminal Appeal on 29th November, in the case of *Rex* v. *Bell*, before the Lord Chief Justice, Mr. Justice Lush and Mr. Justice Sankey, says *The Times*, the Court dismissed the appeal against sentence of James Bell, who had been convicted at West Riding (Wakefield) Sessions of larceny and had been sentenced to three years' penal servitude, and who had also been convicted of being an habitual criminal and sentenced to five years' preventive detention.

The Lord Chief Justice, in giving the judgment of the Court, said that Bell had pleaded guilty at the Sessions to a charge of stealing a silver tobacco box from a dwelling-house. His record was terrible. He was fifty-nine or sixty years of age, and he began stealing thirty-five years ago. Since 1888 scarcely a year had passed in which he was not convicted of an offence or was in prison. When he stole the tobacco box he was out of prison on licence from his last previous sentence. If the words " habitual criminal " were justly to be applied to any human being, they might be applied there, but one could not help observing that the offence of stealing the tobacco box was not in itself of great gravity. As in many other cases, the sentence of three years' penal servitude by which it was punished had only been passed because the Prevention of Crime Act, 1908, provided that the passing of a sentence of penal servitude should be a condition precedent to the imposition of a sentence of preventive detention as an habitual criminal. That Court had said over and over again that the task of those who had to administer the criminal law would be simpler if that condition precedent were absent from the statute. It did not seem right that a person should be sentenced to three years' penal servitude merely because it was thought right that he should have a sentence of preventive detention. There was no good reason why, in a proper case, a sentence of preventive detention should not follow a much shorter sentence.

When Bell's record was regarded, however, it was impossible to say that the sentence of three years' penal servitude which had been passed on him was excessive, and as he was rightly convicted of being an habitual criminal no difficulty arose in the present case.

Income-Tax Evasions.

At the Birmingham Assizes last Saturday, says *The Times*, Thomas James Priestman, a metal merchant, carrying on business in Leopold-street, Birmingham, was fined £5,000 by Mr. Justice Acton.

Mr. J. G. Hurst, K.C., who prosecuted, said the condition of the metal market during the later stages of the war was such that men in the defendant's position were able to make fabulous sums. This almost unheard-of wealth coming to the defendant appeared to have tempted him, in order to avoid paying in full enormous sums for income-tax and excess profits duty, to embark on a course of deception and fraud. For the seventeen months ended December, 1917, the profits made by the defendant's business were £78,000. At the time of the proceedings before the magistrates the defendant paid £10,000 to cover the loss to the Inland Revenue.

Sir W. Finlay, K.C., for the defendant, pointed to unemployment and loss to trade creditors that would result if the defendant were sent to prison. There would also be a loss to the Crown, to whom the defendant owed £40,000 in respect of duties for the last two years, which had been agreed upon and properly disclosed.

The judge said the defendant had pleaded "Guilty" to serious frauds on the income-tax authorities, which might be fairly described as considerable, ingenious, and persistent. The defendant's offences would carry a term of imprisonment if he alone had to be considered. He took the course of imposing a fine out of consideration for the public interest and those who were in a measure dependent upon the defendant. The defendant, he said, had found himself in possession of wealth of which he probably never dreamt, and while others were undergoing every form of privation and even death he deliberately perpetrated frauds to avoid his liabilities.

The Firearms Act.

The question whether a "safety" revolver intended for blank cartridges and sold for starting races, frightening burglars, and stage purposes, was a "firearm" within the meaning of the Firearms Act, 1920, came, says *The Times*, before Alderman Sir John Bell for decision at the Mansion House on 29th November.

Mr. William Henry Taylor, carrying on business in the City, was summoned for having sold two of the revolvers, he not being registered as a firearms dealer under the Firearms Act.

Mr. Fox Andrews, for the defence, contended that inasmuch as the revolvers were fitted with a metal plug or stopper screwed into the barrel they did not come within the definition of "firearm" in the Act, as no bullet or other missile could be discharged from them.

Detective-inspector Wagstaff, of the City Police, said that two weapons bought at the defendant's shop were tested by an official of the Gunmakers' Company by firing "live" cartridges in them. The plug in the barrel of one of them was not blown out by the bullets, but that of the other was, and the prosecution contended that thereupon it became an effective firearm within the meaning of the Act. A joint test had since been made with another of the revolvers, a number of live cartridges being fired, but the plug or stopper was not dislodged by the bullets.

The designer and importer of the revolvers said they were made in Belgium and the Customs allowed them to be imported. He designed the revolvers in 1916, and asked the Home Office if there was any objection to their being sold as safety revolvers, and the Home Office replied that they saw no objection. Scotland Yard also saw no objection to the sale of a similar pistol. He did not agree that it was necessary, but for the future he would have the screw of the plug made with a longer thread and with a transverse screw added, and the revolver further altered so as to prevent "live" cartridges being used.

Sir John Bell said he thought there had been a technical breach of the Act, and he should only fine the defendant a nominal penalty of £5 and order him to pay two-and-a-half guineas costs on one of the summonses. He dismissed the other summons.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4%. Next London Stock Exchange Settlement, Thursday, 13th December.

	Middle Price. 5th Dec.	Interest Yield. £ s. d.
English Government Securities.		
Consols 2½%	57½	4 7 0
War Loan 5% 1929-47	100⅜	5 0 0
War Loan 4½% 1925-45	97½	4 12 0
War Loan 4% (Tax free) 1929-42	101	3 19 0
War Loan 3½% 1st March 1928	96½	3 12 0
Funding 4% Loan 1960-90	88⅞	4 10 0
Victory 4% Bonds (available at par for Estate Duty)	92½	4 7 0
Conversion 3½% Loan 1961 or after ..	77⅝	4 10 0
Local Loans 3% 1912 or after	66½	4 10 0
India 5½% 15th January 1932	103	5 7 0
India 4½% 1950-55	88	5 2 0
India 3½%	67½xd.	5 4 0
India 3%	57½xd.	5 4 0
Colonial Securities.		
British E. Africa 6% 1946-56	113	5 6 0
Jamaica 4½% 1941-71	96½	4 13 0
New South Wales 5% 1932-42	100½	4 19 0
New South Wales 4½% 1935-45	92½xd.	4 17 0
Queensland 4½% 1920-25	97½	4 12 0
S. Australia 3½% 1926-36	84	4 3 0
Victoria 5% 1932-42	100	5 0 0
New Zealand 4% 1929	95	4 4 0
Canada 3% 1938	80xd.	3 15 0
Cape of Good Hope 3½% 1929-49	79xd.	4 8 0
Corporation Stocks.		
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	55	4 11 0
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	65½	4 11 0
Birmingham 3% on or after 1947 at option of Corpn.	65½	4 12 0
Bristol 3½% 1925-65	78½	4 9 0
Cardiff 3½% 1935	87½	4 0 0
Glasgow 2½% 1925-40	74	3 8 0
Liverpool 3½% on or after 1942 at option of Corpn.	76xd.	4 12 0
Manchester 3% on or after 1941	66	4 11 0
Newcastle 3½% irredeemable	76	4 12 0
Nottingham 3% irredeemable	67	4 10 0
Plymouth 3% 1920-60	69	4 7 0
Middlesex C.C. 3½% 1927-47	81	4 6 0
English Railway Prior Charges.		
Gt. Western Rly. 4% Debenture	86	4 13 0
Gt. Western Rly. 5% Rent Charge ..	104½	4 16 0
Gt. Western Rly. 5% Preference	102½	4 17 0
L. North Eastern Rly. 4% Debenture ..	84	4 15 0
L. North Eastern Rly. 4% Guaranteed ..	83½	4 16 0
L. North Eastern Rly. 4% 1st Preference	82	4 17 0
L. Mid. & Scot. Rly. 4% Debenture ..	85½	4 13 0
L. Mid. & Scot. Rly. 4% Guaranteed ..	84½	4 15 0
L. Mid. & Scot. Rly. 4% Preference ..	82½	4 17 0
Southern Railway 4% Debenture ..	84	4 15 0
Southern Railway 5% Guaranteed ..	102½	4 17 0
Southern Railway 5% Preference ..	101	4 19 0

The Mansion House Fund for the relief of the sufferers by the earthquakes in Japan, which was opened by Sir Edward Mocr the former Lord Mayor, in September, has now reached £260,0 and is closed. Further applications (if any) from British suffer in this country must be sent to the Mansion House without dela

The Wareham and Purbeck Rural District Council ha received a letter from the Treasury Solicitor stating that he und stood that work on improvements proposed to be undertak by the military authorities in connection with a road widen scheme had not been commenced, because it "is now uncer whether Lulworth Camp will be retained permanently by t Crown."

The Old Bailey Calendar.

The Lord Mayor on Tuesday opened at the Sessions House, Old Bailey, the December Session of the Central Criminal Court.

The Recorder, in charging the Grand Jury, says *The Times*, said the calendar contained the names of sixty persons, and was one of the smallest calendars in point of number of cases that had ever come before the court. One of the reasons for the smallness of the calendar was the shortness of the interval which had elapsed since the November Session. One regrettable feature was a recrudescence of crimes of violence. There were three charges of murder, one of manslaughter, one of arson, two, he regretted to say, of robbery with violence. Blackmail, too, was becoming prevalent again. In the case of George William Golden, twenty-three, artist, who is charged with the wilful murder of Ethel Eliza Howard in a taxicab, the Recorder said it would be the Grand Jury's duty to return a true bill. Referring to the charge against a husband and wife, members of the sect called the "Peculiar People," accused of the manslaughter of their little boy by not calling in medical aid when he was suffering from diphtheria, the Recorder said that if people had the means to do so, however honestly they thought that doctors and drugs were contrary to their views, if they chose to act on their views and death resulted, that was manslaughter.

New York Comptroller Released.

A Reuter's message from Washington, of 3rd December, says: President Coolidge has granted "executive clemency" to Mr. Craig, the chief financial officer of New York City, who was sentenced to sixty days' imprisonment for contempt of court. The remission of the sentence was granted on the recommendation of Mr. Daugherty, the Attorney-General. In giving the decision the President said it was solely due to the public necessity of keeping Mr. Craig in his post as Comptroller of New York City, and he expressed condemnation of the Comptroller's conduct in criticising the Federal Courts of New York. The President's action removes what promised to develop into a national political issue. Certain political leaders of both parties had sharply criticised the severity of the sentence.

Mr. Charles L. Craig, the Comptroller of New York, *The Times* says, was sentenced in October, 1919, by Judge Mayer, in the New York Federal Court, to imprisonment on a charge of contempt of court for writing a letter to one of the Public Service Commissioners criticising a decision by Judge Mayer, which helped to block the way to public ownership of New York City's railways. It was only on 19th November that the sentence of sixty days' imprisonment was confirmed by the United States Supreme Court.

Lawyers' Rooms.

"Penguin" in the *Observer* (2nd inst.) in an article on "Rooms" in fiction, says:—

Two rooms in the neighbourhood of Lincoln's Inn are among those that live in my mind. Both, as you have guessed, belong to lawyers. The first is Mr. Tulkinghorn's room, in "Bleak House":—

Heavy, broad-backed, old-fashioned mahogany and horsehair chairs, not easily lifted, obsolete tables with spindle-legs and dusty baize covers, presentation prints of the holders of great titles in the last generation, or the last but one, environ him. A thick and dingy Turkey-carpet muffles the floor where he sits, attended by two candles in old-fashioned silver candlesticks that give a very insufficient light to his dark room. The titles on the backs of his books have retired into the binding; everything that can have a lock has got one; no key is visible.

And the other belongs to Mr. Furnival, who put up such a splendid defence for Lady Mason in "Orley Farm." It is the topmost of three rooms, each dingier than that outside it:—

There were heavy curtains to the windows, which had once been ruby but were now brown; and the ceiling was brown, and the thick carpet was brown, and the books which covered every portion of the wall were brown, and the painted woodwork of the doors and windows was of a dark brown.

After a long sitting and heated debate, the Jersey States last Saturday, by a large majority, decided to reply to the Imperial Government's request for a contribution towards the Exchequer, and to point out that neither legally nor constitutionally could they agree to make any such payment.

Legal Execution in Scotland.

The Departmental Committee appointed to inquire into the existing law and practice in regard to the functions and duties of Messengers-at-Arms and Sheriff Officers in Scotland, state in their report that, in consequence of the consistent falling off in numbers of these officials, their services have become increasingly difficult to obtain in various districts, particularly in the northern and western parts of the mainland, and in the islands. In such areas their services are now in many cases wholly unavailable to the lieges, and in others are obtainable only at a cost which is prohibitive, or is out of all reasonable proportion to the interest involved. In the course of the evidence given before the Committee it was stated that the existing state of matters as regards the enforcement of diligence in Skye and Long Island is against the public interest; and "that it is bad that debts should be left outstanding and irrecoverable, and that there should be occasion for thinking that the law can be defied with impunity."

The Committee recommend that when diligence of any kind requires to be done under any Court of Session decree or warrant under the Signet, within any county in which there shall not be a resident Messenger-at-Arms, or within any of the islands of Scotland, it should be competent for a Sheriff Officer to execute such diligence. And that in any proceedings under the Small Debt Acts it should be lawful for a Sheriff Officer, or where there is no Sheriff Officer practising in the Sheriffdom in which the arrestment is to be used, a law agent, or a Messenger-at-Arms, to execute arrestments by sending a registered letter by post containing the schedule of arrestment. This recommendation provides that on the back of such letter there shall be written, or printed, a notice to the effect that it contains a schedule of arrestment.

It is also recommended, in supplement to the powers conferred by s. 49 of the Sheriff Courts Act 1907, that, where a charge is necessary upon a decree for payment of money granted in the Small Debt Court, and the place of execution is within a county in which there shall not be a resident Sheriff Officer, or within any of the islands of Scotland, it shall be competent for a law agent or a Messenger-at-Arms to execute it by sending to the debtor a registered letter containing a schedule of charge. In case of no Messenger-at-Arms or Sheriff Officer being available, it is recommended that the Sheriff should have power to authorize any person to perform any execution on such decree or warrant. There is a further recommendation to the effect that the fees payable to Messengers-at-Arms ought to be revised.

Law Students' Journal.

Law Students Debating Society.

At a meeting of the Society held at the Law Society's Hall on Tuesday, the 4th inst. (Chairman, Mr. John F. Chadwick), the subject for debate was: "That this house is opposed to the principle of 'the dole.'" Mr. M. C. Batten opened in the affirmative; Mr. W. H. Betts, Jnr., opened in the negative. The following members also spoke: Messrs. B. St. G. Bower (Visitor), V. R. Aronson, W. M. Pleadwell, and W. S. Jones. The opener having replied, the motion was lost by three votes.

Obituary.

Lord Loreburn.

We regret to record that Lord Loreburn died on the 30th ult. at his residence, Kingsdom House, Deal, at the age of seventy-seven. He resigned the Lord Chancellorship eleven years ago on the ground of ill-health, and he had been for several years living in complete retirement. We give our own appreciation of him elsewhere. *The Times*, in its obituary notice, says, "though he cannot be ranked among the great masters of jurisprudence, yet in sterling and straightforward character and in single-minded resolve to administer the purest justice he was not surpassed by any of the men whom he followed or preceded. Ill-health probably prevented him from rendering the greatest service as a law reformer, but there will always stand to his credit the establishment of the Court of Criminal Appeal. The nation also owes him a debt of gratitude for the scrupulous impartiality and discernment of his appointments to the High Court and the County Courts, as well as for the courage with which he resisted the pressure which was put upon him to nominate magistrates for purely political reasons in order to equalise the representation of parties. For seven years, which were full of acute party conflicts, he presided over the House of Lords, composed mainly of his political opponents, and by his dignity, tact, and transparent honesty of purpose he won not only the respect but the affection of that highly critical Assembly. On his retirement members of the House paid him the exceptional tribute of a presentation portrait. His popularity in all circles was as universal as it was unsought, and his early distinction as a cricketer and rackets player gave him that character of sportsmanship which the British people particularly admire in their public men."

Robert Threshie Reid was born at Corfu on 3rd April, 1846, the second son of Sir James John Reid, of Mouswald Place, Dumfries, sometime Chief Justice of the Ionian Islands, by a daughter of Robert Threshie, of Barnbarroch, Kirkcudbrightshire. Educated at Cheltenham College, Reid won a demyship at Magdalen. Subsequently he gave this up and won a scholarship at Balliol. He took first classes in both Moderations and *Lit. Hum.* and obtained the Ireland Scholarship in 1868. He at once set about preparation for the Bar, to which he was called by the Inner Temple in June, 1871. In the same year he married Emily Douglas, daughter of Captain Arthur Cecil Fleming, 1st Dragoon Guards. Joining the Oxford circuit, he rose rapidly into good practice, and this was combined with the general popularity indicated by the familiar "Bob" Reid. At the General Election of 1880 Reid was returned as the second Liberal member for Hereford, where he had the advantage of Sir Henry James's influence. Throughout he was a loyal supporter of Mr. Gladstone. In December, 1885, he was defeated for Dumbartonshire, but in the following July he was returned for the Dumfries District, for which he sat until he became Lord Chancellor.

In 1882 he took silk, but his practice as a leader did not prevent hard work for his party, and when Sir Charles Russell and Sir Horace Davey were raised, the former to the House of Lords and the latter to the Court of Appeal, Rigby was made Attorney-and Reid Solicitor-General; and on Rigby's promotion, Sir Robert Reid naturally became Attorney-General, holding that office from October, 1894, to June, 1895. The greatest legislative achievement of the Government of 1892-5 was Sir William Harcourt's Finance Bill of 1894, in the discussions on which the burden mainly fell on Rigby as a Chancery lawyer. Out of office, Reid dropped to a considerable extent out of practice. The Unionist Government, however, availed themselves of his services in the boundary dispute between Venezuela and British Guiana in 1899, in which he was arbitrator; for this he received the distinction of G.C.M.G. During the troubled period of the South African War, Reid, with characteristic disregard of his professional and political interests, came out strongly on the side of the Boers.

In 1905 Reid became Lord Chancellor in Sir H. Campbell-Bannerman's Government, taking the title Lord Loreburn of Dumfries. The Court of Criminal Appeal was his principal achievement and though it encountered the strong opposition of not a few lawyers, its necessity has not since been questioned. He was also strong in his advocacy of the extension of the jurisdiction of county courts.

He had not been on the Woolsack long before he was seized with an affection of the heart which laid him aside from time to time, and ultimately brought about his resignation in June, 1912, when he was succeeded by Lord Haldane. It was significant of his sense of public duty that he insisted on a considerable reduction of the life pension to which he became entitled. He had been advanced to an earldom in July, 1911, and had been named as one of the four Counsellors of State during the King's absence in India in that year. He was the author of a work on "Capture at Sea," published in 1913, and in 1919 he published "How the War Came."

Oxford had made him honorary D.C.L., and in 1912 his old college, Balliol, exercising its unique privilege, elected him as its Visitor. His first wife died in 1904, and in 1907 he married a lady who belonged to the opposite political camp—Violet Elizabeth, eldest daughter of the late Mr. W. F. Hicks Beach, of Witcombe Park, Gloucestershire, and niece of Earl St. Aldwyn (Sir Michael Hicks Beach), the eminent Conservative statesman. Lord Loreburn had no children, and his peerages become extinct.

Tributes in the House of Lords.

At the sitting of the House of Lords on Monday, says *The Times*, the Lord Chancellor said:—It would, I think, be in accordance with your wishes that before the list for the day is called reference should be made to the loss suffered by this House and by the administration of justice in this country by the lamented death of Lord Loreburn. Lord Loreburn had for some years been absent owing to ill-health from our sittings, but his death marks the final disappearance of a notable figure from our ranks. Robert Reid, as he was, was, as you know, an athlete in his young days, and a sound and manly outlook upon life was with him until the end. Success came to him early at the University, at the Bar, and in Parliament. He was for a time a Law Officer, and afterwards for upwards of six years he presided as Lord Chancellor in this House, and for many years after his resignation of that office he was a constant attendant at the sittings of this House in its judicial capacity, and at the Judicial Committee of the Privy Council. His judgments are on record—short, lucid, decisive, and convincing, they are daily quoted in this place and in the courts.

Of his work in Parliament it is not for me to say much to-day, but there, too, he gained the respect and affection of his colleagues and of his opponents alike. He took, as you know, a leading part in the passing of the Act which gives an appeal in criminal cases, an Act which to-day has, I believe, universal assent and approval. I should like to say, too, that as chairman for many years of the Joint Committee of the two Houses which dealt with Consolidation Bills, he rendered a service to the consolidation of our laws which perhaps only those who, like myself, sat with him upon that Committee for a long time can fully appreciate. We have lost a man of great attainments and of high character, and his memory will long be cherished in this place.

Viscount Haldane said: I was a colleague of Lord Loreburn in the Cabinet for many years and I was his immediate successor upon the Woolsack, and it is natural that I should wish to add to what the Lord Chancellor has just said a few words, and they shall be very few. Robert Reid was a man of very unusual personality. He had some qualities that were extraordinarily attractive. He had a gift of making his presence felt wherever he was. I do not think that he ever entered upon the law with that passion for it which others have shown, and that to some extent interfered with his career as a lawyer. But these very qualities of individuality made him a remarkable advocate and in some respects a remarkable Judge. He had a gift of expression which was without many rivals in the records of mere expression in the history of our judgments, and he had a natural courtesy upon the Bench which rendered him attractive to the advocate concerned and to his colleagues. Then as a speaker of this House he was beyond doubt a very remarkable speaker, who produced an effect upon his audience which was very great. He was a man of strong opinions which he did not hesitate to make manifest, but that belonged to his quality as a man of strong personality, and I think we feel ourselves as a nation all the poorer when a man of his comparatively rare talent has gone from among us.

Mr. Alexander Moncrieff, K.C., said: Will your Lordships allow me, speaking from the Bar, to join with your Lordships in paying tribute to the eminent Judge who for so many years, with such dignity and with such acceptance, presided over your Lordships' deliberations. I venture to draw upon personal recollection when I say that we should always specially remember the eminent courtesy and unfailing kindness with which, during his tenure of the Woolsack, counsel were always received at the Bar, and I venture to recall also the individual qualities and personality of a great Judge as something that will not be forgotten at the Bar.

Legal News.

Information Required.

Will the Solicitors who, I hear, advertised for **CASTELL, Margate,** some time ago, write me—Mrs. W. S. Cross, 137 Stafford Road, Wallington.

ALICE BENVENUTO ROBIOLIO, late of Chester House, Melville Street, Ryde, Isle of Wight, Spinster, deceased.—Will any Solicitor or other person having custody or knowledge of any Will of the above-named deceased, who died on the 25th day of March 1923, please communicate with Messrs. Emanuel & Simmonds, Solicitors, of 23, Finsbury Square, London, E.C.2.

Appointments.

On the 30th ult. Sir CHARLES HENRY SARGANT, Lord Justice of Appeal, was, by His Majesty's command, sworn of His Majesty's Most Honourable Privy Council, and took his place at the Board accordingly.

His Honour Judge FRANCIS REYNOLDS YONGE RADCLIFFE, K.C., has been appointed to be Commissioner of Assize to go the Northern Circuit.

The Delegacy of King's College have appointed Mr. MAXIME DE GOROSTARZU, of the French Embassy, as Lecturer in the Code Civil Français.

General.

Mr. Justice Salter, who has been presiding in the Civil Court at Manchester Assizes, acting on medical advice returned to London on Monday.

We understand that a provisional winding-up order was made in the matter of Athertons, Ltd., law agents and law bankers, New Stone Buildings, 63-4, Chancery Lane, W.C., on 30th November, upon a petition presented on 28th November.

Sir Kingsley Wood, speaking in West Woolwich on the 30th ult., said that County Court Judges were again differing from one another in the interpretation of the New Rent Restriction Act, and he understood a test case was going to be heard by the Court of Appeal.

The Whewell Scholarships in International Law, at Cambridge, have been awarded as follows: First scholarship—A. D. Evans, B.A., St. John's College. Second scholarship—P. W. Duff, B.A., Trinity College, and W. L. Walker, B.A., LL.B., Emmanuel College, who are equal. Re-elected to second scholarships—A. L. Evans, B.A., St. John's; and W. W. Hitching, B.A., St. John's.

It is rare, says *The Times* ("City Notes," 4th inst.), that revision of a company's assets involves so great an appreciation as has happened to the City of London Real Property Company. Hitherto the value of its freehold and leasehold properties has appeared in the balance-sheet at cost, and the total value on that basis is £3,871,064. A valuation recently made shows a total of £4,718,034, and hence the decision of the company made at yesterday's meeting to increase the capital to an amount corresponding more closely to the present-day worth of the assets. This enormous increment in values, which represents a sixty years' growth, affords an interesting sidelight on the City's increased wealth that has occurred during that period. As a matter of fact to the extent of the company's operations, the chairman (Mr. W. E. R. Innes) stated yesterday that the buildings it owned in the City covered an area of approximately eight acres of freehold properties and five acres of leasehold out of the total area of one square mile of which the City consists.

One of the most important matters, says *The Times* ("City Notes," 5th inst.), coming up for discussion at the present annual session in Bombay of the Associated Chambers of Commerce of India and Ceylon is the question of expediting procedure in the Indian Courts, a subject to which we have frequently referred. Two resolutions are down for discussion. That of the Bombay Chamber refers to the great difficulty experienced in the recovery of debts and enforcement of rights, and the adverse effect which this has on the trade of the country, and desires the Association to impress upon local governments the importance of taking steps to expedite the procedure in the Courts under their jurisdiction. The resolution of the Punjab Chamber proposes the appointment of a committee which should submit to the Viceroy the opinion of the members of the Association on the subject. These difficulties in securing legal decisions were referred to by Mr. Frank Nelson, president of the Associated Chambers, who in his opening speech spoke of the almost universal delays throughout India in the administration of justice. Commercial interests in this country are very closely concerned in the matter, and it is to be hoped that the action which the Association proposes to take will be really effective.

The Times correspondent at Paris, in a message of the 4th inst., says:—An important case relating to war damages in occupied territories came before the German-Polish Mixed Arbitral Tribunal sitting in Paris under the presidency of M. Moriaud, Dean of the Geneva Faculty of Law. The Hirzburg and Wilezyuski Company, of Lodz, in Poland, claimed payment from the German Government in respect of requisitions made in their works during the war. It was urged on behalf of the German Government that at the time when the requisitions were made the claimants were not citizens of an allied State, and that the Treaty of Versailles was applicable only to Allied States existing before the war. It was also pointed out that the damage had been caused in occupied territory, and not in German national territory. On behalf of the claimants it was argued that the Treaty made no distinction between the citizens of the various signatory Powers, and that if any property was treated by Germans as enemy property and injury done to it that fact of itself gives a right to reparations. Moreover, occupied territories were considered in the Treaty as equivalent to national territories, and reparation was due for measures taken in them exactly as if they had been taken on German soil. Judgment was reserved.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Romer.
Monday ..Dec. 10	Mr. More	Mr. Hicks Beach	Mr. Ritchie	Mr. Synge
Tuesday 11	Jolly	Bloxam	Synge	Ritchie
Wednesday 12	Ritchie	More	Ritchie	Synge
Thursday 13	Synge	Jolly	Synge	Ritchie
Friday 14	Hicks Beach	Ritchie	Ritchie	Synge
Saturday 15	Bloxam	Synge	Synge	Ritchie
Date.	Mr. Justice Tomlin.	Mr. Justice Russell.	Mr. Justice Astbury.	Mr. Justice P. O. Lawrence
Monday ..Dec. 10	Mr. Bloxam	Mr. Hicks Beach	Mr. Jolly	Mr. More
Tuesday 11	Hicks Beach	Bloxam	More	Jolly
Wednesday 12	Bloxam	Hicks Beach	Jolly	More
Thursday 13	Hicks Beach	Bloxam	More	Jolly
Friday 14	Bloxam	Hicks Beach	Jolly	More
Saturday 15	Hicks Beach	Bloxam	More	Jolly

Winding-up Notices.

JOINT STOCK COMPANIES.

LIMITED IN CHANCERY.

CREDITORS MUST SEND IN THEIR CLAIMS TO THE LIQUIDATOR AS NAMED ON OR BEFORE THE DATE MENTIONED.

London Gazette.—FRIDAY, November 30.

DEVENOR TINPLATE CO. LTD. Dec. 31. Alfred O. John, Bank-bldgs., Temple-st., Swansea.

EAST KENT BREWERY CO. LTD. Jan. 12. Sir William Pink, K.B.E., 11, Ironmonger-lane, E.C.

ORION OIL CO. LTD. Dec. 31. Arthur J. Pegg, 11, Winchester House, Old Broad-st., E.C.

PRINCE'S BREWERY LTD. Dec. 14. Sidney H. Hossell. Bailey, Parr, Hasell & Parr, 20, Temple-row, Birmingham.

THE DETAANT ANTHRACITE COLLIERY (1914) LTD. Dec. 17. Frederick Gérard van de Linde, 4, Fenchurch-avenue.

HARVEY LTD. Dec. 31. Fred B. Watson, 16, North Parade and Mercantile Buildings, East Parade, Leeds.

J. BRACKEN & CO. LTD. Jan. 15. Edward D. Taylor, Bond-place, Leeds.

HARDY TINPLATE CO. LTD. Dec. 31. Alfred O. John, Bank Buildings, Temple-st., Swansea.

London Gazette.—TUESDAY, December 4.

WIGHTON & PARTNERS LTD. Dec. 20. J. E. Elliott, Caxton-house, Tothill-st., Westminster.

ALFRED RAMM & CO. LTD. Dec. 15. Everard P. Major, 47, Temple-row, Birmingham.

BARBOUR & LOMAX LTD. Dec. 31. Alfred H. Scampton, 28, Market-st., Wigan.

Resolutions for Winding-up Voluntarily.

London Gazette.—FRIDAY, November 30.

The Bolton Commercial Plate Glass Insurance Co. Ltd.
Electrical Services Limited, Bradford.
J. Dixon (London) Ltd.
British Orion Oil Co. Ltd.
W. H. Crawford Ltd.
W. H. S. Clark & Co. Ltd.
Perfecta Toffee Ltd.
S. B. K. Harrison, Reid & Co. Ltd.
The Anchor Steam Fishing Co. Ltd.
Cedford Gas Process Co. Ltd.
Hughes & Co. (Bradford) Ltd.
Liverpool Produce Company (Leicester) Ltd.
Compayne Ltd.
Crawford Lighterage Co. Ltd.
Maison Pickett Ltd.
The Accrington and District Mutual Benefit Money Society.
The Roundwood Mills Co. Ltd.
Goole Motors Ltd.
The Anchor Film Co. Ltd.
Rushton's Brewery Ltd.
Roth & Gibson Ltd.
The Valley Mills Co. Ltd.

London Gazette.—TUESDAY, December 4.

The North Melbourne Electric Tramways & Lighting Co. Ltd.
Sucra & Co. Ltd.
Property Buyers' Association Ltd.
Bristol Furniture Nail and Button Co. Ltd.
Truslove & Hanson Ltd.
Hollingreave Manufacturing Co. Ltd.
Cherwell Hall & Milham Ford School Ltd.
Value Payable Service Ltd.
Bridport Coffee House Co. Ltd.
Franklin Thomas Trading Co. Ltd.
Worthing Builders' Supply Co. Ltd.
A. & D. Birrell Ltd.
Adam & Eve Motor Garage Co. Ltd.
Hughes & Reid Ltd.
Dale Steamship Co. Ltd.
The Health Centre for Wales Ltd.
The Troutbeck Park (Westmorland) Green Slate Co. Ltd.
H. E. Motors Ltd.
North Wales Constitutional Club Fund Ltd.
Burlington Industrial Laboratories Ltd.
Reader Haynes Manufacturing Co. Ltd.
Lumens Ltd.
Roys Ltd.
G. Eagleton Ltd.
Louis Tussauds Art Wax Co. Ltd.
Feuerheerd's Rotors Ltd.
Feuerheerd's Rotors (British Empire) Ltd.
National Association of Discharged Sailors & Soldiers Club Ltd.

Bankruptcy Notices.

RECEIVING ORDERS.

London Gazette.—FRIDAY, November 30.

ABBOTT, Capt. A. W., Pimlico. High Court. Pet. Aug. 30. Ord. Nov. 23.

ASHWORTH, FRED, Northwich, Tailor and Clothier. Manchester. Pet. Nov. 26. Ord. Nov. 26.

BALL, FREDERICK A., Chingford, Engineer. Edmonton. Pet. Nov. 2. Ord. Nov. 23.

BATHO, WALLACE, Prees, nr. Whitchurch, Builder. Shrewsbury. Pet. Nov. 26. Ord. Nov. 26.

BELL, CHARLES E., and ALDERMAN, JOHN S., Kettering, Market Salesmen of Confectionery. Northampton. Pet. Nov. 21. Ord. Nov. 21.

BENTLEY, JOHN, Blackpool. Blackpool. Pet. Oct. 27. Ord. Nov. 23.

CARDEN, HERBERT, Kingston-upon-Hull, Dairyman. Kingston-upon-Hull. Pet. Nov. 28. Ord. Nov. 28.

CARTER, EDITH S., Worthing. Brighton. Pet. Nov. 9. Ord. Nov. 27.

CARTER, JOHN, Coseley, Staffs, Haulier. Dudley. Pet. Nov. 26. Ord. Nov. 26.

CHORLTON, JOHN, Blackpool, Grocer. Blackpool. Pet. Nov. 26. Ord. Nov. 26.

CLARIDGE, ARTHUR J., Treherbert, Colliery Surface Labourer. Pontypridd. Pet. Nov. 26. Ord. Nov. 26.

COLEMAN, EDMUND R., Wellingborough, Confectioner. Northampton. Pet. Nov. 27. Ord. Nov. 27.

CROFT, PERCY, Great Grimsby, Boot and Shoe Dealer. Great Grimsby. Pet. Oct. 31. Ord. Nov. 26.

CURZON, ALFRED E., Hanley, Draper. Hanley. Pet. Nov. 27. Ord. Nov. 27.

DEAN, ALBERT, Wilsden, Bradford, and DEAN, FRED, Nurserymen. Bradford. Pet. Nov. 26. Ord. Nov. 26.

DYSON, REGINALD T., Fleet, Hants. Guildford. Pet. Sept. 12. Ord. Nov. 27.

EDWARDS, ALFRED, and HULSE, CHARLES EDWARD, Shrewsbury, Grocers. Shrewsbury. Pet. Nov. 17. Ord. Nov. 28.

GAUNT, SYDNEY F., Upper Holloway, Spring and Bedstead Maker. High Court. Pet. Nov. 28. Ord. Nov. 28.

HOLMAN, WILLIAM, Thorpe le Fallows, Lincs, Farmer. Lincoln. Pet. Nov. 26. Ord. Nov. 26.

HORSFALL, WILLIAM M., Liverpool, Electrical Engineer. Birkenhead. Pet. Nov. 24. Ord. Nov. 24.

HOSKING, JAMES T., Trefula, Redruth, Farmer. Truro. Pet. Nov. 24. Ord. Nov. 26.

JONES, JOHN C., Ton Pentre, Glam, Fish and Chip Merchant. Pontypridd. Pet. Nov. 27. Ord. Nov. 27.

KIRK, JAMES, Ashton-upon-Mersey, Chef. Manchester. Pet. Nov. 14. Ord. Nov. 28.

KELLY, WALTER J., South Molton, Grocer. Barnstaple. Pet. Nov. 27. Ord. Nov. 27.

LANGMEAD, EVELYN, and HARROP, IDA E., Warrington, Dressmakers. Warrington. Pet. Nov. 26. Ord. Nov. 26.

LEGAT, WILFRED V. Preston, Motor Dealer. Preston. Pet Nov. 26. Ord. Nov. 26.

LISTER, DAVID A., Great Driffield, Yorks, Licensed Victualler. Kingston-upon-Hull Pet. Nov. 27. Ord. Nov. 27.

MILLER, JOSEPH, Litchfield-st., Silk and Woollen Merchant. High Court. Pet. Nov. 26. Ord. Nov. 26.

NEALE, FRANK, Tuffley, Glos., Milk Seller. Gloucester. Pet. Nov. 26. Ord. Nov. 26.

NELSON, JOHN P., Brighouse, Cooper and Char-a-banc Proprietor. Halifax. Pet. Nov. 26. Ord. Nov. 26.

PAGE, T. C. M., Oxford, Motor Garage Proprietor. Oxford. Pet. Nov. 17. Ord. Nov. 28.

PEARSON, JAMES F. S., Exeter, Colour Specialist. Exeter. Pet. Nov. 27. Ord. Nov. 27.

PENSON, JAMES G. Portsmouth, Tailor. Portsmouth. Pet. Nov. 16. Ord. Nov. 16.

POLLARD, CHARLES W., Barrowden, Rutland, Timber Merchant. Leicester. Pet. Nov. 26. Ord. Nov. 26.

ROBINSON, FREDERICK, Conisborough, Boot Manufacturer. Sheffield. Pet. Nov. 27. Ord. Nov. 27.

ROGERS, HARRY, Warrington, Electrical Engineer. Warrington. Pet. Oct. 16. Ord. Nov. 27.

SANDS, WILLIAM B., Brunstead, Norfolk, Farmer. Norwich. Pet. Nov. 1. Ord. Nov. 28.

SMITH, FRED, Manchester, Yarn Agent. Manchester. Pet. Oct. 1. Ord. Nov. 26.

SOLOMONS, MICHAEL H. H., Devonshire-st., W., Ophthalmic Optician. High Court. Pet. Nov. 26. Ord. Nov. 26.

STANLEY, HARRY, Maidenhead. Windsor. Pet. Oct. 12. Ord. Nov. 26.

STODDART, WILLIAM, Cardiff, Dental Surgeon. Cardiff. Pet. Oct. 17. Ord. Nov. 23.

THOMAS, TEGAI, Aberkenfig, Grocer. Cardiff. Pet. Nov. 26. Ord. Nov. 26.

THOMAS, HENRY, Ystrad, Glam., Colliert Stoker. Pontypridd. Pet. Nov. 26. Ord. Nov. 26.

THORPE, ARTHUR, Rotherham, Draper. Sheffield. Pet. Nov. 27. Ord. Nov. 27.

TRIGGER, FRANK, Tiverton, Licensed Victualler. Exeter. Pet. Nov. 27. Ord. Nov. 27.

VARTY, THOMAS, and VARTY, FRANK L., Royston, Brass and Iron Founders. Cambridge. Pet. Nov. 27. Ord. Nov. 27.

WEBB, WILLIAM C., Portsmouth, Mineral Water Manufacturer. Portsmouth. Pet. Nov. 22. Ord. Nov. 22.

WHEATER, GERTRUDE, Leicester, Milliner. Leicester. Pet. Nov. 27. Ord. Nov. 28.

WILLIAMS, ALBERT, Hanley, Licensed Victualler. Hanley. Pet. Nov. 28. Ord. Nov. 28.

YATES, ALFRED E., Chesham, Venereal Specialist. Aylesbury. Pet. Nov. 9. Ord. Nov. 26.
Amended notice substituted for that published in the *London Gazette* of Nov. 27, 1923.

RANDLES, JANE E., Hereford, Milliner. Hereford. Pet. Nov. 12. Ord. Nov. 22.

London Gazette.—TUESDAY, December 4.

ASQUITH, HOWARD, Liverpool, General Merchant. Liverpool. Pet. Nov. 30. Ord Nov. 30.

BEDDOE, EDWARD C., Southport, Rating Surveyor. Liverpool. Pet. Oct. 9. Ord. Nov. 29.

BENJAMIN, ELIAS M., Kentish Town, Dealer in Motor Accessories. High Court. Pet. Nov. 1. Ord. Nov. 27.

BOWYER, FREDERICK S. and FIVASH, FREDERICK J. Gloucester, Coal Merchants. Gloucester. Pet. Dec. 1. Ord. Dec. 1.

BRACKLEY, JAMES, Farmer, Bampton, Oxford. Oxford. Pet. Nov. 30. Ord. Nov. 30.

BRENT, JOHN, Bideford, Builder. Barnstaple. Pet. Nov. 30. Ord. Nov. 30.

BROWN, WILLIAM H., Cleethorpes, Plumber. Great Grimsby. Pet. Nov. 30. Ord. Nov. 30.

BURNARD, C. & Co., Nottingham, Tobacco Dealers. Nottingham. Pet. Nov. 16. Ord. Nov. 29.

COAKER, FREDERICK, Loddiswell, Devon, Farmer. Plymouth. Pet. Nov. 30. Ord. Nov. 30.

DRAKE, SAM, Halifax, Licensed Victualler. Halifax. Pet. Nov. 29. Ord. Nov. 29.

FISHER, WILLIAM, Chiswick. Brentford. Pet. July 10. Ord. Nov. 26.

FORREST, JAMES F., Pontefract, Grocer. Wakefield. Pet. Nov. 30. Ord. Nov. 30.

GARBUTT, ZACHARIAH, Sheffield, General Dealer. Sheffield. Pet. Nov. 29. Ord. Nov. 29.

GIFFORD, ERNEST A., Holsworthy, Farmer. Barnstaple. Pet. Nov. 30. Ord. Nov. 30.

GORDON, LEWIS, Burnley, Journeyman Shoemaker. Burnley. Pet. Nov. 29. Ord. Nov. 29.

GREEN, SIR DONALD P., Pall Mall. High Court. Pet. Nov. 1. Ord. Nov. 28.

GRIFFITHS, ANNIE, Cwmyglo, Carnarvon, Grocer. Bangor. Pet. Nov. 28. Ord. Nov. 28.

JACOBS, B., Friday-street. High Court. Pet. Oct. 2. Ord. Oct. 31.

JENNINGS, ANDREW, Liverpool, Painter. Liverpool. Pet. Nov. 23. Ord. Nov. 29.

JOHNSON, DAVID, Ashington, Northumberland, Electrical Contractor. Newcastle-upon-Tyne. Pet. Nov. 28. Ord. Nov. 28.

JONES, JOHN T., Leigh, Lancs., Greengrocer. Bolton. Pet. Nov. 30. Ord. Nov. 30.

KEENE, STEPHEN H., Staines, Builder. Windsor. Pet. Nov. 29. Ord. Nov. 29.

KING, FREDERICK B., Dalston. High Court. Pet. Oct. 31. Ord. Nov. 28.

MASON, OZWORTH G., Ipswich, Engineer Fitter. Ipswich. Pet. Nov. 27. Ord. Nov. 27.

MASON, JOSEPH, Liverpool, Motor Engineer. Liverpool. Pet. Nov. 13. Ord. Nov. 29.

MCCUBBIN, ANDREW S., Palace-street, Victoria, Assistant Manager. High Court. Pet. Nov. 6. Ord. Nov. 28.

MCLENNAN, DOUGLAS, Pudsey, Grocer. Bradford. Pet. Nov. 30. Ord. Nov. 30.

MOORE, JAMES W., Sidmouth. Exeter. Pet. Nov. 29. Ord. Nov. 29.

MORRIS, ELIZABETH A., Pengam, Mon., General Dealer. Tredegar. Pet. Nov. 28. Ord. Nov. 28.

MOTT, JOHN W., Beeford, Yorks, Tailor. Kingston-upon-Hull. Pet. Nov. 29. Ord. Nov. 29.

NEAL, JAMES, Torquay, Gardener. Exeter. Pet. Nov. 3. Ord. Nov. 30.

NUGENT, IDA, Blenheim-st., W.1, Gown Manufacturer. High Court. Pet. Nov. 30. Ord. Nov. 30.

PAGE, ARTHUR T., Lichfield, Furniture Dealer. Walsall. Pet. Nov. 28. Ord. Nov. 29.

PINNER, E., Manchester, Tobacco Dealer. Salford. Pet. Nov. 17. Ord. Nov. 29.

PITCAN, AMELIA, Duke-st., W.1. High Court. Pet. Nov. 21. Ord. Nov. 29.

POULTON, PERCY J., Dunstable, Builder. Luton. Pet. Nov. 30. Ord. Nov. 30.

PRUDHOE, JOSEPH, Burnhope, near Stanley, Grocer's Assistant. Newcastle-upon-Tyne. Pet. Nov. 28. Ord. Nov. 28.

RAMSEY, ISAAC, Middlesbrough, Marine Store Dealer. Middlesbrough. Pet. Nov. 28. Ord. Nov. 28.

REUBENS, HARRIS, Mile End-rd., Tobacconist. High Court. Pet. Nov. 29. Ord. Nov. 29.

RESSICH, A. L., Craven-st., W.C. High Court. Pet. Oct. 31. Ord. Nov. 29.

RIMMER, BENJAMIN, Lambeth. High Court. Pet. Oct. 31. Ord. Nov. 29.

RISDALE, THOMAS, Hanham, Bristol, Horse Dealer. Bristol. Pet. Nov. 15. Ord. Nov. 29.

RITSON, CHRISTOPHER J., Sheffield, Druggist. Sheffield. Pet. Nov. 29. Ord. Nov. 29.

SMITH, HENRY, Sheffield, Coal Merchant. Sheffield. Pet. Nov. 30. Ord. Nov. 30.

SPORLE, ARTHUR, Assington, Suffolk, Farmer. Colchester. Pet. Oct. 31. Ord. Nov. 27.

THARP, CHARLES J., Gloucester terr. High Court. Pet. Oct. 30. Ord. Nov. 29.

THOMAS, THOMAS, Vale of Towy, Carmarthen, Wholesale Produce Merchant. Carmarthen. Pet. Dec. 1. Ord. Dec. 1.

THOMPSON, DAVID W., Merthyr Tydfil, Collier. Merthyr Tydfil. Pet. Dec. 1. Ord. Dec. 1.

TRICE, ARTHUR, Rainham, Kent, Corn Dealer. Rochester. Pet. Nov. 5. Ord. Nov 30.

VARIPATI, CLAUDE, Leadenhall-st., Merchant. High Court. Pet. Sept. 7. Ord. Nov. 29.

VARIPATI, MARCEL, Leadenhall-st., Merchant. High Court. Pet. Sept. 7. Ord. Nov. 29.

Amended Notice substituted for that published in the *London Gazette* of October 2, 1923:—

PARSLOW, FRANK, Formby, Lancs., Surveyor. Liverpool. Pet. June 29. Ord. Sept. 27.